1867.

SUPREME COURT OF THE UNITED STATES.

No. 164.

JOHN PEMBERTON, Liquidator of the Merchants' Insurance Company, Appellant,

vs.

EDWARD LOCKETT, JAMES G. BERRET, and HENRY D. JOHNSON.

APPEAL FROM THE CIRCUIT COURT U. STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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Style of Court.

DISTRICT OF COLUMBIA, to wit:

At a Circuit Court of the District of Columbia, begun and held in and for the County of Washington, at the City of Washington, on the third Monday of October, being the nineteenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States the eighty-second: Present, The Honbl. James Dunlap, Chief Judge, James S. Morsell and William M. Merrick, Associate Judges.

JONAH D. HOOVER, ESQ.,
Marshal.

JOHN A. SMITH,
Clerk.

In the record of proceedings of said Court, amongst others, are the following, to wit:

EDWARD LOCKETT, JAMES G. BERRET, and HENRY D. JOHNSON
vs.
JOHN PEMBERTON, Liquidator of the Merchants' Insurance Company of New Orleans, and the Honl. WM. L. MARCY.

Be it remembered, that heretofore, to wit, on the 22d June, in the year 1855, the said complainants, by Alexander H. Lawrence, Esquire, their solicitor, filed in Court here the following bill of complaint and exhibits:—

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the District of Columbia, sitting in Chancery:

Humbly complaining, show unto your Honors, Edward Lockett, of the City of Savannah and State of Georgia, and Henry D. Johnson and James G. Berret, of the City of Washington and District of Columbia, that one John Pemberton, of the City of New Orleans, in the State of Louisiana, Liquidator of the Merchants' Insurance Company, a company established in said City of New Orleans, in his capacity as liquidator as aforesaid, on the 23d day of December, in the year 1851, was owner of a certain claim or claims against the British Government, for the value of certain slaves freed from the American brig "Creole" at Nassau, in the Island of New Providence, one of the Bahama Islands, in November, 1841, which slaves were liberated by acts of British functionaries, and the value of which slaves was afterwards paid for by said insurance company to

the owners of said slaves; that your orators prior to said 23d day of December, had rendered valuable services to said John Pemberton, liquidator as aforesaid, in the prosecution of said claim, and the prospect of the recovery of said claim being extremely doubtful, in consequence of the peremptory refusal of the British Government to allow the same, that on said 23d day of December, 1851, the said John Pemberton, liquidator as aforesaid, in consideration of said services, and of the agreement on the part of your orators to render further services in the prosecution of said claim, without charge to said John Pemberton, except in the event of the recovery of the same, executed and delivered to your orators an agreement in writing, which is now on file in the department of State, the same being in the terms following:—

"For and in consideration of services rendered and to be rendered by James G. Berret, Henry D. Johnson, and E. Lockett, of Washington, D. C., in the prosecution of our claims for the value of slaves freed at Nassau, N. P., which we had to pay for, we do hereby agree to allow the said Berret, Johnson, and Lockett, their heirs or assigns, one-half of any or all such sums of money, principal and interest, as may be recovered on account of our said losses, it being understood that the said Berret, Johnson, and Lockett, are to use their best exertions in the prosecution of said claims, but that no allowance whatever, as expense or compensation for their services, is to be made by us to the said Berret, Johnson, and Lockett, unless our said claims shall be allowed in whole or in part.

Witness our hands and seals at New Orleans, this 23d day of December, in the year of our Lord 1851.

(Signed,) JOHN PEMBERTON,
Liquidator of the Merchants' Insurance Company.

Signed in presence of
R. SCHEIBER,
GEO. P. BOWERS, Sen.

And your orators show that a certified copy of said agreement is hereunto annexed, marked "A," copied at page 18. And your orators further show that upon the execution and delivery of the agreement aforesaid, they used, and have ever since continued to use, their best exertions in the prosecution of said claim; that they obtained at their own expense, from New Orleans and the public departments at Washington, all the information accessible in relation to said claim, and finding that there was no prospect of obtaining payment of the claim directly from the British Government, they exerted all the influence which they could command, for the establishment of a commission for the adjustment of claims of citizens of the United States against Great Britain. with the view of presenting the said claim of John Pemberton before such commission. And your orators further show that on the 8th day of February, 1853,

a convention was made between the Governments of the United States and Great Britain, for the adjustment of claims of citizens of the United States against the British Government, and of subjects of Great Britain against the United States, and that subsequently, in pursuance of said convention, commissioners were appointed for hearing and deciding upon said claims.

And your orators further show that two of your orators, to wit, James G. Berret and Edward Lockett, after the establishment of said commission, committed the management of said claim to your orator, Henry D. Johnson, and that your orators, at their own expense, retained counsel to assist the said Johnson in the management of said claim, and that said Johnson, within a reasonable time from the commencement of the sitting of the said commission, with the assistance of counsel, retained for that purpose, commenced the preparation of the claims of owners of slaves freed from the Creole, all the other claims of owners, with the exception of one claim of small amount, having been committed to said Johnson, for the purpose of submitting said claims, including the claim of John Pemberton, aforesaid, to said commission; and that whereas, the main facts and principles of law necessary to be established were common to the cases of all the claimants for the value of the slaves freed from the Creole; and whereas, the principal points in dispute were the facts as to the liberation of the slaves aforesaid, and the principles of law applicable to these facts; that for the purpose of establishing the liability of the British Government upon the facts in the case and the principles of law involved therein, the said Henry D. Johnson first prepared a memorial in behalf of Edward Lockett, one of the owners of slaves liberated from said brig Creole, and in this memorial embodied all the facts as to the liberation of the slaves from the "Creole," and presented the principles of law which he considered applicable to the cases of all the claimants; that, at the expense of your orators, he obtained from the Department of State, evidences substantiating the facts set forth in said memorial, the character of which evidence is shown by exhibits hereunto annexed, marked "B," copied at page 11; that he investigated and caused to be investigated all the legal authorities bearing upon the case, and prepared an elaborate argument in support of the positions, facts, and principles of law set forth in said memorial; that he duly presented said memorial, evidence, and argument to said commisssioners, and that he further expressly notified said commissioners, by letter, that said memorial, evidence, and argument were intended to apply to the claim of John Pemberton, aforesaid, and that he notified the said commissioners that he should, in due time, file a memorial in behalf of said John Pemberton; and your orators show that the said memorial of Edward Lockett, and the argument and letter to said commissioners have been transmitted by said commissioners to the Department of State, and that exhibits, hereunto annexed, marked "C," copied at page 37, are copies of the same; and your orators

pray that they may be considered a part of this bill. And your orators further show that they are informed that the cases of all the claimants aforesaid were classed under the head of the "Creole case," that the said memorial of Edward Lockett first presented the "Creole case" to said commissioners, and that the case of the Creole was considered and discussed by said commissioners before any other memorial, except that of Edward Lockett, aforesaid, was presented.

And your orators further show that within a reasonable time the said Henry D. Johnson, in behalf of your orators, addressed a letter to said John Pemberton, liquidator, as aforesaid, requesting the said Pemberton to forward to him, the said Johnson, the evidence which was wanting to support the claim of the said Pemberton, that the same might be placed before said commissioners, and transmitted said letter through the mail; and that said Edward Lockett also wrote to said Pemberton, requesting him to transmit the proofs in his case to said Johnson. And your orators further show that no reply having been received from said John Pemberton, the said Henry D. Johnson being possessed of all the facts upon which the claim of John Pemberton, aforesaid, was founded, and being fearful that said claim might not be filed before said commissioners within the period prescribed by the convention aforesaid, prepared a memorial setting forth said claim, signed the same as attorney of said John Pemberton, and transmitted the same to said commissioners, and the same was presented, as your orators are informed. And your orators show that the said memorial was transmitted by said commissioners to the Department of State, and that the exhibit, hereunto annexed, marked "D," copied at page 68, is a copy of the same; and your orators pray that the same may be considered a part of this bill.

And your orators further show that they are informed that said John Pemberton, for the purpose, as your orators believe, of defrauding them of their lawful commissions on said claim, caused the evidence which the said Johnson had requested the said Pemberton to transmit to him, to be presented to the commissioners through certain solicitors in London; and your orators aver that nothing remained for them to do in the prosecution of said claim except to transmit the evidence aforesaid to said commissioners, and this they were prevented from doing, by the negligence or fraud of said Pemberton. And your orators further show, that on the ninth day of January, 1855, the commissioners aforesaid being unable to agree in relation to the case of the "Creole," the umpire selected by them awarded to the said John Pemberton, liquidator, as aforesaid, upon the claim aforesaid, the sum of $28,460, twenty-eight thousand four hundred and sixty dollars, as appears by a copy of said award, hereunto annexed, marked E, copied at page 73, and that the same has been placed by the British Government in the hands of the Honorable William L. Marcy, of the City of Washington, for payment of the parties entitled to the same. And your orators aver that they

are informed that no evidence or argument bearing upon the general facts and principles involved in the Creole case were presented to said commissioners or the agent of the United States, except through the agency of your orators; and your orators verily believe that without the exertions used by them, or those employed by them, said *said* award would never have been made to said John Pemberton. And your orators further show that they have paid all the expenses of procuring evidence in support of said claim, that they have employed counsel in the United States, and agents in London, to attend to said case, at their own expense, and have received no compensation or allowance whatever from said John Pemberton.

Your orators aver that they have reason to believe and fear, and do verily believe and fear, and therefore charge, that the said John Pemberton, liquidator, as aforesaid, having already received one-half of said award, unless enjoined by this honorable Court, will receive the whole of said award of $28,460, and appropriate the whole of the same to his own use, and will withdraw the same beyond the jurisdiction of the Court, and will not allow to your orators one-half of said claim, so recovered, according to the tenor of the agreement aforesaid, but will so manage and dispose the same as to defeat your orators of their lawful lien upon said award.

Your orators being without adequate remedy at law, pray your honors to grant the United States writ of injunction, enjoining and commanding the said John Pemberton, liquidator of the Merchants' Insurance Company, aforesaid, whom they pray may be made defendant to this bill, his attorney, agents, servants and all others claiming to act under him, or by authority derived from him, or any agent, attorney, representative, or assigns of said Merchants' Insurance Company, not to demand or receive the remaining half of said award to John Pemberton, liquidator, as aforesaid, to wit, the sum of fourteen thousand two hundred and thirty dollars, subject to a deduction of five per cent., for the expenses of said commissioners, until the further order of your honorable Court, and commanding and enjoining the Honorable William L. Marcy from paying the said half of said award to any other persons than your orators, until the further order of your honorable Court, and that a subpœna be issued and served on said John Pemberton, and that he be commanded to appear and answer the several matters and allegations of this bill as fully as if they were again repeated, &c.; and that your honors will decide and decree that the said half of said award, subject to the deductions prescribed by said convention, shall be paid to your orators, and that your honorable Court will decree that damages shall be paid by said John Pemberton, for withholding said sum from your orators, and that such other and further relief shall be, &c. And your orators, as in duty bound, will ever pray.

HENRY D. JOHNSON,
JAMES G. BERRETT, &
EDWARD LOCKETT, by
JOHN L. HAYS,
their Solicitor.

DISTRICT OF COLUMBIA,
County of Washington:

Personally appeared before me, a Justice of the Peace within and for the County of Washington, Henry D. Johnson, and made oath that the facts stated in the foregoing bill, so far as stated from his own knowledge, are true, and so far as derived from information of others he believes them to be true.

JOHN D. BARCLAY.
Justice Peace.

Exhibit A, referred to in complainant's bill, at page 8.

For and in consideration of services rendered, and to be rendered, by James G. Berret, Henry D. Johnson, and E. Lockett, of Washington City, D. C., in the prosecution of our claims for the value of slaves freed at Nassau, N. P., which we had to pay for, we do hereby agree to allow to said Berret, Johnson and Lockett, their heirs or assigns, one-half of any or all such sums of money, principal and interest, as may be recovered on account of our said losses, it being understood that the said Berret, Johnson and Lockett are to use their best exertions in the prosecution of said claim, and that no allowance whatever as expenses or compensation for their services is to be made by us to the said Berret, Johnson and Lockett, unless our said claim shall be allowed in whole or in part. Witness our hand and seal at New Orleans, this 23d day of December, in the year of our Lord 1851.

JOHN PEMBERTON,
Liquidator of the Merchants' Insurance Company.

Signed in presence of
R. SCHREIBER,
GEO. P. BOWERS, Sr.

Exhibit B, referred to in complainant's bill, page 11.

Exhibit B.

To the Honorable Commissioners appointed for the settlement of outstanding claims between the United States of America and her Britannic Majesty, in pursuance of a convention concluded on the 8th of February, 1853, and proclaimed in the United States on the 20th of August, 1853.

The memorial of Edward Lockett, of the City of Savannah, in the State of Georgia, respectfully showeth:

That your memorialist is a native citizen of the United States of America, and proprietor in his own right of a claim to indemnity against the government of her Britannic Majesty, under the provisions

of the convention between the United States of America and her Britannic Majesty, concluded and signed by their respective plenipotentiaries at London, on the 8th day of February, 1853, and that his claim to indemnity is founded upon the following facts, which this memorial will briefly set forth:—

Your memorialist represents that on the 27th of October, 1847, he was the owner of forty-one slaves or persons bound to service, who were natives of America, and belonged to a class of persons recognized as property by the constitution of the United States in those parts of the Union in which slavery exists. The said slaves, with others, were shipped on board the Brig Creole, of Richmond, Virginia, Ensor, bound to New Orleans, for the purpose of being transported from one port of the United States to another. The Brig Creole cleared from Hampton Roads on the 27th of October, 1841. On the 7th of November, 1841, at nine o'clock in the evening, a portion of the slaves rose against the officers while engaged in enforcing the discipline of the vessel, wounded the captain dangerously, and the chief mate and two of the crew severely, and killed a passenger named John Hewell, the owner of a part of the slaves, who was employed with the officers in resisting the mutiny. The slaves soon obtaining entire possession of the vessel, compelled the officers to steer her to the port of Nassau, in the British Island of New Providence, and remained masters of her until her arrival at that place, on the morning of the 9th of November, 1841.

Vide Senate Document, page 37.

Ibid.

The American consul at Nassau having been apprised of the situation of the vessel by the chief mate, who left the vessel for this purpose immediately upon her arrival in port, repaired to the Government House and requested the Governor to take measures to prevent the escape of the slaves, and to have the murderers secured. The consul having received a written assurance from the Governor that under the existing circumstances he would comply with his request, repaired to the vessel, placed the chief mate in command of her (in room of the captain, disabled by his wounds), and found the slaves all quiet. At about noon twenty African soldiers with an African sergeant and corporal, came on board, by order of the Governor. They were commanded by a white officer, who was introduced by the consul to the mate as the commanding officer of the ship.

Senate Doc., page 2, Letter of Mr. Bacon, Con. Mr. Bacon's letter.

The American consul having returned on shore, was summoned to attend the Governor and council, who were in session relative to this case, and was informed that a decision had been made by them in the following terms:—

1st. That the Courts of Law have no jurisdiction over alleged offences.

2d. But that, as an information had been lodged before his excel-

lency the Governor, charging the crime of murder to have been committed on board the said vessel while on the high seas, it was expedient that the parties implicated in so grave a charge should not be allowed to go at large, and that an investigation ought, therefore, to be made into the charges, and examinations taken on oath, when, if it should appear that the original information was correct and that a murder had actually been committed, that all the parties implicated in such crime, or in other acts of violence, should be detained here until reference could be made to the secretary of state, to ascertain whether the parties detained should be delivered over to the American government or not, and if not, how otherwise disposed of.

Senate Doc., page 5. Letter of C. R. Nesbitt, Colonial Secretary.

3d. (And to this portion of the decision the memorialists invite the particular attention of the Honorable Commissioners.) *That so soon as such examinations* should *be taken, all persons on board the Creole not implicated in any of the offences alleged to have been committed on board of that vessel must be released from further restraint.*

Senate Doc., 6th page.

In pursuance of the course adopted by the authorities, two magistrates were sent on board the Creole to undertake the examination. The Consul also went on board. The examination commenced on Tuesday (the 9th), and was continued on Wednesday the 10th, and then postponed until Friday on account of the illness of the captain. On Friday morning it was abruptly and without any explanation terminated. On the same morning a large number of boats assembled near the Creole, filled with colored persons, who were armed with bludgeons. They were under the immediate command of the pilot who took the vessel into the port, an officer of the government, and a colored person. A sloop, or large launch, was also towed from the shore and anchored near the brig. The sloop was filled with men armed with clubs, and clubs were passed from her to persons in the boats. A vast concourse of people were collected on shore opposite to the brig. From the period of the arrival of the vessel, and during the whole time of her occupancy by officers of the British Government, the officers and sentinels on board encouraged the insubordination of the slaves; one officer, on Wednesday, telling the negroes that they were fools not to have killed all hands when they had a chance, when they would all have been free without further trouble.

Senate Doc., 8 page, Mr. Bacon's letter.
Senate Doc., 44 page, Protest.
Senate Doc., 42 page, Protest.

The Americans in the port of Nassau perceiving from the first that the influence of the authorities at Nassau would be exerted to effect the liberation of the slaves, determined to unite and furnish the necessary aid to forward the vessel and negroes to New Orleans. The Consul and the officers of two other American vessels in the port of Nassau combined with the officers and passengers of the Creole to effect this. It was arranged that Captain

Senate Doc., 44 page, Protest.
Senate Doc., 44 page, Protest.

Woodside, of the Bark Louisa, an American vessel in port, with as many of his crew as could be spared, and the second mate and four sailors of the Brig Congress, another American vessel, should come on board of the Creole with arms, and with the officers and crew of the Creole, keep control of the vessel and conduct her with the slaves to Indian Key, in Florida, where there was a United States vessel of war. There would have been little difficulty in accomplishing this, for immediately on the arrival of the vessel at Nassau all traces of the insurrection had ceased. When the American Consul arrived on board the brig, he found the slaves very quiet. They had no means of resistance, all their arms had been thrown overboard, and their habits of submission had returned with their approach to the abodes of civilization. On Friday morning the Consul was informed by respectable persons that an attempt would be made to liberate the slaves by force, and afterwards that an attempt had been made. He himself saw a large collection of boats near the vessel, and was also informed that there was a great concourse of people collected on shore opposite to her. Proceeding to his office he received information from the mate of the threatening state of things, and informed by him that the crew were greatly intimidated. Information of these menacing preparation was given by the Consul in writing to the Governor and council, who promised to protect the Creole from being boarded by force. The Consul, at the request of the Governor, having attended the council, was informed by him that the council had decided, on the receipt of his last communication, that the Attorney-General and Provost-Marshal, with as many policemen as he may deem necessary, should proceed to the vessel, should first have the troops above mentioned, with the prisoners, removed on shore, should prevent any violence being committed by the people collected around the vessel, and *also see that no impediment should be given on board the vessel to the landing of the slaves*, who were called passengers by the Governor. In his communication with the Consul the Governor insisted to the last that the slaves were and could only be treated as passengers.

Senate Doc., 3 p., Mr. Bacon's letter.

Senate Doc., page 3.

Ibid.

In pursuance of the decision of the council, the Attorney-General and other officers accordingly went on board the Creole. The slaves identified as concerned in the mutiny were sent on shore, and the residue of the slaves *were called on deck by* directions of *the Attorney-General*, who addressed them in the following terms:—

"My friends," or "men, you have been detained a short time on board the Creole, for the purpose of ascertaining the individuals who were concerned in this mutiny and murder; they have been identified, and will be detained; the rest of you are free and at liberty to go on shore, and whenever you please." The Attorney-General then left the vessel and moved a short distance from her, while the magistrates in his suite made signals to the boats

Senate Doc., 43 p. Do. 12 page.

Wm. Woodside's Deposition.

which surrounded the vessel to approach. The liberated slaves, assisted by the magistrates, were taken on board the boats, and when landed were conducted by a vast assemblage to the superintendent of the police, by whom their names were registered.

Mr. Gifford, the acting master of the vessel, had been directed by the American Consul to return to the vessel which he had left in the morning for the purpose of apprising the Consul of the critical position of affairs, and to protest against every act of the Attorney-General, or his party, which should liberate the slaves. Mr. Gifford accordingly, before the liberation of the slaves, addressed the Attorney-General in the presence of the magistrates, and protested against the boats being allowed to come alongside of the vessel, or the negroes, other than the nineteen, being sent on shore. The Attorney-General replied that Mr. Gifford had better make no objection, but let them go quietly on shore, for if he did there might be blood shed. At this moment the magistrates advised Mr. Merrill, Mr. McCargo, and the other passengers, to look to their money and effects, as he apprehended that the cabin of the Creole would be sacked and robbed. On the morning of the 12th, before the liberation of the negroes, it was determined by the Consul and the American seamen then in port, that the reinforcement of Americans which had been before arranged should be put on board the vessel. Accordingly, muskets and cutlasses, obtained for this purpose from the American Brig Congress, were wrapped in the American flag, and deposited in the bottom of a boat which approached the Creole with five American seamen. As they approached the guard was drawn up in line fronting them, armed with muskets and fixed bayonets. The officers on board the Creole, although informed that these seamen were sent by the American Consul, ordered the boat away, threatening to fire upon them if they approached. The Americans rowed round the other side of the brig, and renewed the attempt to board the vessel, but without success. They were compelled to return to their vessel and abandon the hope of giving succor to their countrymen. On the 14th of the month the American Consul requested that the nineteen identified as concerned in the mutiny and murder should be given up to be transported for trial to the United States, which request was refused. That the liberated negroes were kept under the special protection of the authorities at Nassau is shown by their subsequent acts. On the 15th of November the Attorney-General wrote a letter to Capt. Ensor, demanding the baggage and other property of the liberated slaves, or passengers as they were called. The captain replied that they had no property, and that besides nothing could be landed but by a permit from the custom-house. Such a permit was immediately obtained, and an officer sent on board to take the articles demanded. Besides the wearing apparel, blankets, and other articles claimed as the property of the liberated slaves, one bale of

Senate Doc., pg. 4, Mr. Bacon's letter.

Senate Doc., 43 pg.

Senate Doc., 45th page.

blankets which had never been opened, was carried away by the officer. Permission was at the same time refused to land and sell a portion of the ship's provisions, now become useless, in order to defray the expenses of the Creole at Nassau, unless the captain would agree to enter the slaves as passengers. Senate Doc., 44 page.

Your memorialist represents that the material facts above stated have not been controverted. But although the authorities at Nassau have denied that these facts, as stated, show a positive interference, your memorial refers to the testimony herewith presented for the proof that the positive interference of the British authorities at Nassau prevented the Creole from proceeding to New Orleans with the slaves on board. Mr. Gifford, the mate of the vessel and the acting master at Nassau, swears "that if there had been no interference of the English authorities, the negroes would have been brought to New Orleans certainly. That interference has caused the loss of the negroes. The affray would not have prevented the negroes from being brought to New Orleans, had it not been for the interference of the said authorities. The negroes had no arms at Nassau; they had been thrown overboard; and they might have been easily overcome; and there was nothing in the way our bringing the negroes to New Orleans, excepting the British authorities. Eleven eye-witnesses of the proceeding in the protest made at New Orleans, say under oath: The nineteen had thrown overboard and burnt all their weapons before their arrival at Nassau, and the aid thus offered of American sailors and arms was amply sufficient for the management and safety of the Creole on her voyage; that if there had been no interference on the part of the legal authorities of Nassau, the slaves might have been safely brought to New Orleans. It was that interference which prevented aid from being rendered by the American sailors in Nassau, and caused the loss of the slaves to their owners. Senate Doc., 45 page.

Your memorialist contends that there is proof of such active interference by functionaries of the British Government as brings his claim for indemnification within the principle laid down by Lord Palmerston in his letter to Mr. Stevenson of the 7th of January, 1837, respecting the claims for compensation in the cases of the Comet, Encomium, and Enterprise. Lord Palmerston says, that her Majesty's Government is of opinion that the rule by which the claims should be decided is, that those claimants must be considered as entitled to compensation who were lawfully in possession of their slaves within the British Territory, and who were disturbed in the legal possession of those slaves by functionaries of the British Government. Your memorialist contends that no administration should be made between the slaves liberated by the interference of the authorities at Nassau, and the nineteen identified as concerned in the mutiny and murder, which the authorities at Nassau refused to give up to be transported for trial to the United States, because, as your

memorialist represents, if they had been transported to Florida or Louisiana for trial, and had been executed for these offences by the laws of those States, the owners of the slaves would have been indemnified for their loss.

If the Honorable Commissioners should be of opinion that the acts of the British authorities did not amount to active and positive interference or disturbance, your memorialist maintains that the persons on board the Creole who were in command of the vessel, and the persons on board who were deputed by the owners of the slaves to keep them in subjection, were prevented from exercising their lawful authority by a well grounded belief, founded upon the acts and declarations of the British authorities in the premises, that the latter would have interfered and prevented that degree of control necessary to maintain the slaves in subjection. And that the Captain and crew of the Creole, and agents of the owners of the negroes were prevented from using the force necessary to coerce the slaves, from a well grounded apprehension, founded on the acts and declarations of the British authorities, that if the masters and agents did attempt to exercise the degree of force necessary to keep the slaves in subjection they would be interfered with and prevented from so doing, or punished by the British authorities for so doing. And your memorialist maintains that the British authorities by their acts and declarations, which prevented the masters and agents from exercising the degree of control necessary to keep the slaves in subjection, and which prevented the masters and agents from receiving the assistance necessary for this purpose, thereby "*disturbed*" the masters and agents in the legal possession of the slaves, and that thereby the Government of Great Britain became liable to pay to the owners the value of the slaves lost by the acts of their functionaries. Your memorialist maintains that if the liberation of the slaves was not effected directly or indirectly by the acts of British functionaries, that the authorities violated the duties imposed upon them by that part of the code regulating the intercourse of friendly States, denominated the Comity of Nations, by refusing such assistance as might enable the master of the vessel, carried by violence and crime out of her course into the port of a friendly power, to resume and prosecute his voyage, and to take the mutineers and murderers to their country to answer for their crimes before the proper tribunal: and that thereby the Government of Great Britain became liable to pay for losses caused by the refusal of its functionaries to render such assistance as was required by the Comity of Nations. Your memorialist refers to some of the principles of international law, upon which he founds his claim for indemnity. Whatever may be the doctrine of British law in Nassau and places within the *exclusive* jurisdiction of that law, it is well established that the lawfulness of the relation of master and slave is recognized by the Law of Nations, and the authorities of Great Britain have no right to disturb this relation when existing between the subjects of a foreign nation

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under the sanction of the laws of that nation, unless such subjects are within the exclusive jurisdiction of British law. It being established that slavery is not contrary to the laws of nations, if any country see fit to establish and continue slavery by law, so far as the legislative power of that country extends all other States are bound to take notice of the existence of such laws, and to prevent any unwarranted interference of its citizens with foreigners acting in proper limits under the sanction of such laws. A vessel on the high seas, beyond the distance of a marine league from the shore, being regarded as a portion of territory of the nation to which she belongs, preserves the rights and immunities which is derived from the laws of the country to which she belongs if, against the will of the master, she be driven or carried nearer to the land or even into port of a foreign nation.

By the comity of nations, merchant vessels even voluntarily entering open ports of other nations are presumed to be allowed to bring with them, and to retain for their protection and government, the jurisdiction and laws of their own country. Such jurisdiction continues until taken away by a positive law of the State whose ports the vessel may enter. The rule of English law, that a slave or negro the instant he *lands* in England becomes a free man—that is, that the law will protect him in the enjoyment of his person and his property (Blackstone, vol. 1, 424), cannot permit the English authorities to enter a ship where the jurisdiction of another nation is acknowledged to exist, and destroy rights lawfully existing under the authority of such nation. If such wrong is done by individuals, the laws recognized by English and American Courts would afford a remedy. These principles of law applied to the facts in this case, establish full grounds for indemnity of your memorialist against the British Government. Your memorialist represents that the value of his slaves, twenty-five in number, lost by the acts of the authorities at Nassau, was twenty thousand dollars, being at the rate of eight hundred dollars for each slave, as shown by the policy of insurance, and prays that the sum of twenty thousand dollars, and interest thereon from of November, 1841, be allowed to him by the honorable commissioners.

Personally appeared the within named Edward Lockett, and made solemn oath that the facts stated in the within memorial are, to the best of his belief, true.

E. LOCKETT.

Before me,

JOS. BANCROFT,
Notary Public C. C.

Claims for slaves liberated under the same circumstances from this vessel, are also made by John Hagan, William H. Goodwin, and George H. Apperson, who in their petition prays that this memorial

may be made a part of their own, and hence they do not set forth so fully the grounds of the claim in the respective cases.

London, March 13th, 1854.

J. A. THOMAS,
U. S. Agent.

Exhibit C.

Exhibit C, referred to in complainant's bill, at page 11.

In the matter of the claim of Edward Lockett for indemnity for the loss of slaves liberated from the brig "Creole."

Argument of Counsel.

The undersigned counsel for the claimant in this case, does not propose to discuss at length the facts on which this claim is founded. It is believed that the facts set forth in the memorial are fully confirmed by the documentary evidence contained in the document herewith submitted, entitled ("Senate") 27th Congress, 2d session (51), "Message from the President of the United States, communicating, in compliance with a resolution of the Senate, copies of correspondence in relation to the mutiny on board the brig Creole, and the liberation of the slaves who were passengers in said vessel." Whatever discrepancy may exist in the evidence of the American and British witnesses as to the question of active interference by the British functionaries, no doubt, as it seems to the undersigned, can be entertained that the liberation of the slaves on board the "Creole" was the direct consequence of the refusal of the British authorities at Nassau to recognize the legal existence of the state of slavery on board the "Creole," and to recognize the rights of the masters and owners, or their agents, to restrain the slaves. There can be no doubt that the refusal of the British authorities to recognize the slaves on board the Creole as the property of their masters, was communicated to the slaves, and that the liberation of the slaves followed immediately upon the communication to the slaves of these views of the British authorities. The Attorney-General, acting officially as the representative of the authorities at Nassau, formally addressed the slaves in a friendly speech, and declared to them that they were to go on shore, and where they pleased. The Governor, in his communications with the Consul, styles the slaves "passengers," and announces to the Consul the solemn decision of the council "that no impediment should be given on board the vessel to the landing of the slaves" (called by him passengers). The military officer in command of the British troops placed on board the vessel tells the slaves that they are free. The American seamen who approached the Creole with *with* arms and ammunition for the purpose of aiding the officers of the vessel in preventing the landing of the slaves, are ordered away by the British soldiers who kept guard on the deck of the Creole, while a fleet of boats, filled with armed

negroes, is suffered to surround the vessel for the purpose of intimidating the American officers and seamen. No one who looks at all the circumstances of this transaction can fail to see that the whole conduct of the British functionaries was expressly calculated and intended to destroy the moral power of the masters of the slaves, or officers of the vessel over the slaves. There has been no attempt to deny that the public sentiment prevailing among negro population at Nassau, in relation to the liberation of the slaves, was entertained by the public functionaries. It is obvious that *that* the British functionaries, while they wished to shield themselves from the responsibility of overt acts, designed to aid the liberation of the slaves by making both masters and slaves understand that the latter were under the protection of British law, which did not recognize them as property, and the masters of the slaves and officers of the vessel to understand that they should not be permitted to use force to restrain their slaves. In any view of the facts of the case it seems to the undersigned, that the conclusion cannot be resisted, *that the conclusion cannot be resisted*, that the acts of the British authorities, either directly or remotely, caused the liberation of the slaves, or in other words, that the owners were disturbed in the legal possession of their slaves by functionaries of the British government," in all which cases the British government has acknowledged that it is bound to indemnify the owners. (Lord Palmerston's letter to Mr. Stevenson of 7th Janury, 1837.) The undersigned proposes to show that the doctrine entertained, promulgated, and acted upon at Nassau, by the British authorities regarding the rights of property in slaves on board of American vessels, are directly opposed to the highest authorities of the English law, and that the foreign owners of slaves, holding them by virtue of the municipal laws of their own country, when disturbed in slaves property by British citizens, may recover indemnity in British Courts.

The principle which governs the decisions upon this subject is that, where slavery exists by the municipal laws of a foreign nation, the rights of property in slaves are to be respected by British Courts. In Somerset's case, which is the leading one in support of the English rule of law, that a slave becomes free by landing on British soil, Lord Mansfield acknowledges that the state of slavery may exist by the force of positive law. The most eminent English authority on the laws of nations, Sir William Scott, repeatedly declares the principles which should govern British Courts in questions involving the rights of property in slaves held by citizens of foreign nations who recognize slavery.

Somerset case.

In pronouncing the decree of the High Court of Admiralty in the case of the Diana, a Swedish vessel, having slaves on board which had been condemned by a Colonial Court of Admiralty (1 Dodson, 95), Sir William Scott says:—

Diana. 1 Dodson, 95.

"The condemnation also took place on a principle which this

Court cannot in any manner recognize, inasmuch as the sentence affirms 'that the slave trade, from motives of humanity, hath been abolished by most civilized nations, and is not at the present time legally authorized by any.' This appears to me to be an assertion by no means sustainable. This Court is disposed to go as far in discountenancing this odious traffic as the law of nations and the principles recognized by English tribunals will warrant it in doing, but beyond the principles it does not feel itself at liberty to travel. It cannot proceed on a sweeping anathema of this kind against property belonging to the subjects of foreign independent states. The position laid down in the sentence of the Court below, that the slave trade is not authorized by any civilized states, is unfortunately by no means correct, the contrary being notoriously the fact, that it was tolerated by some of them. This trade was at one time, we know, universally allowed by the different nations in Europe, and carried on by them to a greater or less extent, according to their respective necessities, &c." The principle which has been extracted, by the judge of the Court below, from the case of the Amadie, is the reverse of the real principle there laid down by the superior Court, which was, that where the municipal laws of the country to which the parties belong have prohibited the trade, the tribunals of this country will hold it to be illegal upon the general principles of justice and humanity, and refuse restitution of the property; but on the other hand, though they consider the trade to be generally contrary to the principles of justice and humanity, when not tolerated by the laws of the country, they will respect the property of persons engaged in it under the sanction of the laws of their own country.

The lords of appeal did not mean to set themselves up as legislators for the whole world, or presume in any manner to interfere with the commercial regulations of other states, or to lay down general principles that were to overthrow their legislative provisions with respect to the conduct *to the conduct* of their own subjects. It is highly fit that the judge of the Court below should be correct in the view which he has taken of this matter, since the doctrine laid down by him in his sentence is inconsistent with the peace of this country and the rights of other states."

The same views are proclaimed with great clearness in the case of Le Louis, 2d Dodson, 238, in which case it is held that trading in slaves, and *a fortiori* the holding of slaves, is not a crime by the universal law of nations.

Le Luis, 2 Dodson, 23.

Sir William Scott says, "a Court in the administration of law cannot attribute criminality to an act where the law imputes none. It must look to the legal standard of morality, and upon a question of this nature, that standard must be found in the law of nations, as fixed and evidenced by general and ancient and admitted practice, by treaties, and by the general tenor of the laws and ordinances, and the formal transactions of civilized states; and, looking to those authorities, I find a difficulty in maintaining that the traffic

is legally criminal. Let me not be misunderstood or misrepresented as a professed apologist for this practice, when I state facts which no man can deny, that personal slavery arising out of forcible activity is coeval with the earliest periods of the history of mankind; that it is found existing (and as far as appears without animadversion) in the earliest and most authentic records of the human race; and it is recognized by the codes of the most polished nations of antiquity, that, in the light of Christianity itself, the possession of persons so acquired has been in every civilized country invested with the character of property, and secured as such by all the protections of law—that solemn treaties have been framed and national monopolies eagerly sought to facilitate and extend the commerce in this asserted property—and all this with the sanctions of law, public and municipal, and without any opposition, except the protests of a few private moralists, little heard and less attended to, in every country, till within these very few years, in this particular country. If the matter rested here, I fear it would have been deemed a most extravagant assumption in any Court, of the law of nations, to pronounce that this practice, the tolerated, the approved, encouraged object of law, ever since man became subject to law, was prohibited by that law and was legally criminal. But the matter does not rest here; within these few years a considerable change of opinion has taken place, particularly in this country.

Formal declarations have been made and laws enacted, in reprobation of this practice, and pains, ably and zealously conducted, have been taken to induce other countries to follow the example; but at present with insufficient effect; for there are nations which adhere to the practice, under all the encouragement which their own laws can give it. What is the doctrine of our courts of the law of nations relatively to them? Why, that their practice is to be respected; that their slaves, if taken, are to be restored to them; and if not taken under innocent mistake, to be returned with costs and damages—all this surely upon the ground that such conduct on the part of any state is no departure from the law of nations; because, if it were, no such respect could be allowed to it, upon an exemption of its own making; for no nation can privilege itself to commit a crime against the law of nations by a mere municipal regulation of its own; and if our understanding and administration of the law of nations be that every nation, independently of treaties, retains a legal right to carry on this traffic, and that the trade carried on under that authority is to be respected by all tribunals, foreign as well as domestic, it is not easy to find any consistent grounds on which to maintain that the traffic, according to our own view of that law, is criminal. The right of property in slaves has been also recognized by the Courts of common law in England. It has been held by them that a foreigner who is not prohibited from carrying on the slave trade by the laws of his own country, may in a British court of justice recover damages sustained by him in respect of the wrongful seizure by a British sub-

ject of a cargo of slaves on board of a ship, then employed by him in carrying on the African slave trade. Madrarzzo *v.* Wills, 3 Barn. and Ald., 353 p.

Maddrazzo vs. Wills, 3 Barn. & Ald, 353 page.

This was an action brought by a Spaniard against a British subject who had unlawfully and without justifiable cause captured a ship with three hundred slaves on board. The only question was the amount of damages; Abbot, C. J., who tried the cause, in reference to the very strong language of the acts of Parliament declaring the traffic in slaves a violation of right and contrary to the principles of justice and humanity, doubted whether the owner could recover damages in an English Court of Justice for the value of the slaves as property; on further consideration he and the whole Court were of opinion that the plaintiff was entitled to recover for the value of the slaves. That opinion went upon the ground that the traffic in slaves, however wrong in itself, if prosecuted by a Spaniard between Spain and the coast of Africa, and if permitted by the laws of Spain and not restrained by treaty, could not be lawfully interrupted by a British subject on the high seas. In his opinion, Mr. Justice Bayley says, "as a Spaniard cannot be considered as bound by the acts of the British Legislature prohibiting the trade, it would be unjust to deprive him of a remedy for the wrong which he has sustained. *He had a legal property in the slaves of which he has by the defendant's acts been deprived.*" In this case Mr. Justice Best cites the cases of the Fortuna, the Donna Marianna, and the Diana, in the Admiralty Court, and the Amadie, before the Privy Council, and says: "These cases establish the rule that ships which belong to countries which have prohibited the slave trade are liable to capture and condemnation if found employed in such trade, but that the subjects of countries which permit the prosecution of this trade cannot be interrupted while carrying it on. It is clear from these authorities that the slave trade is not condemned by the general law of nations."

Commonwealth vs. Ares.

The same views have been maintained by the Courts in those States of the United States where the public sentiment is strongest against slavery. In the case of Commonwealth *vs.* Ares, in the State of Massachusetts, Mr. Chief Justice Shaw, while holding that a slave brought voluntarily by his master from a slave State in the United States to Massachusetts was free, then says: But although slavery and the slave trade are deemed contrary to natural right, yet it is settled by the judicial decisions of this country and of England that it is not contrary to the law of nations. It has been too long and too extensively admitted by the laws of all modern civilized nations, and more explicitly by those who have had foreign colonies, to warrant any one independent community to say that it is opposed to the laws of nations. The authorities are cited in the case of the Antelope (10 Wheaton Report, 120), and that case is itself an authority

directly in point. The consequence is that each independent community in its intercourse with every other, is bound to act on the principle that such other country has a full and perfect authority to make such laws for the government of its own subjects as its own judgment shall dictate and its own conscience approve, provided the same are consistent with the laws of nations; and no independent community has any right to interfere with the acts or conduct of another State, within the territory of that State, or on the high seas, which each has an equal right to use and occupy; and that each sovereign State governed by its own laws, although competent and well authorized to make such laws as it may think most expedient to the extent of its own territorial limits, and for the government of its own subjects, has no authority to enforce her own laws or treat the laws of other States as void, although contrary to its own views of morality. This view seems consistent with most of the leading cases on the subject. The learned Chief Justice further says: "upon a general view of the authorities, and upon an application of the well established principles upon this subject, we think they fully maintain the point stated, that, though slavery is contrary to natural right and to the principles of justice, humanity and sound policy, as we adopt them and found our laws upon them, yet not being contrary to the laws of nations, if any other State or community see fit to establish and continue slavery by law, *so far as the legislative power of that country extends we are* bound to take notice of the existence of those laws, and we are not at liberty to declare and hold an act done within those limits unlawful and void, upon our views of morality and policy, which the sovereign and legislative power of the place has pronounced to be lawful. If, therefore, an unwarranted interference or wrong is done by our citizens to a foreigner, acting under the sanction of such laws, and within their proper limits, that is within the local limits of the power by whom they are thus established, or on the high seas, which each and every nation has a right in common with all others to occupy, our laws would no doubt afford a remedy against the wrong done."

Assuming it to be proved that the owners of the slaves on board the "Creole" were disturbed in their possession by the acts of the British functionaries at Nassau, the question next arises, Was the "Creole" lying within three marine miles from the British coast, and driven by necessity from the high seas so far within the jurisdiction of the United States as to make interference with slave property on board of her unwarrantable and unlawful, according to the principles laid down by the authorities above cited? Upon this question it would be presumptuous for the undersigned to add anything to the remarks of Mr. Webster, addressed by him when Secretary of State in the letter to Lord Ashburton of August 1st, 1842, on this very case of the "Creole" (the works of Daniel Webster, vol. 6th; Same, p. 303), after stating the facts bearing upon this case, Mr. Webster continues: "In the southern States of this Union,

slavery exists by the laws of the States and under the guaranty of the Constitution of the United States, and it has existed in them from a period long antecedent to the time when they ceased to be British Colonies. In this state of things it will happen that slaves will be often on board coasting vessels, as hands, as servants attending the families of their owners, or for the purpose of being carried from port to port. For the security of the rights of their citizens, when vessels having persons of this description on board are driven by stress of weather, or carried by unlawful force into British ports, the United States propose the introduction of no new principle into the law of nations. They require only a faithful and exact observance of the injunctions of that code as understood and practised in modern times. Your Lordship observes that I have spoken only of American vessels driven into British ports by the disasters of the seas, or carried in by unlawful force. I confine my remarks to those cases, and because they are the common cases, and because they are the cases which the law of nations most emphatically exempts from interference. The maritime law is full of instances of the application of that great and practical rule which declares that that which is the clear result of necessity ought to draw after it no penalty and no hazard.

If a ship be driven by stress of weather into a prohibited port, or into an open port, with prohibited articles on board, in neither case is any forfeiture incurred. And, what may be considered a still stronger case, it has been decided, by eminent English authority, and that decision has received general approbation, that, if a vessel be driven by necessity into a port strictly blockaded, this necessity is a good defence, and exempts her from penalty. "A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subject exclusively to the jurisdiction of that nation. If against the will of her master or owner she be driven or carried nearer to the land, or even into port, those who have, or ought to have, control over her, struggling all the while to keep her upon the high seas, as so within the exclusive jurisdiction of her own government, what reason or justice is there in creating a distinction between her rights and immunities in a position thus the result of absolute necessity, and the same rights and immunities before superior power had forced her out of her voluntary course? But, my lord, the rule of law and the comity and practice of nations go much further than these cases of necessity, and allow even to merchant vessels, coming into any open port of another country voluntarily, for the purpose of lawful trade, to bring with her, and keep over her, to a very considerable extent, the jurisdiction and authority of the laws of her own country, excluding to this extent, by consequence, the jurisdiction of the local law. A ship, says the publicists, though at anchor in a foreign harbor, preserves its jurisdiction and its laws." It is a natural to consider the vessels of a nation as parts of its terri-

tory, though at sea, as the state retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessels even in parts of the sea subject to a foreign dominion."

This is the doctrine of the law of nations clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practice of modern nations." "If a murder be committed on board of an American vessel by one of the crew upon another, or upon a passenger, or by a passenger on one of the crew or another passenger, while such vessel is lying in port, within the jurisdiction of a foreign state of sovereignty, the offence is cognizable and punishable by the proper Court of the United States, in the same manner as if such offence had been committed on board the vessel on the high seas. The law of England is supposed to be the same." It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must, doubtless, be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships, not only over the high seas, but into ports and harbors, or wheresoever else they may be water borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation itself."

"If a vessel be driven by weather into the ports of another nation, it would hardly be alleged by any one that, by the mere force of such arrival within the waters of the state, the law of that state would so attach to the vessel as to affect existing rights of property between persons on board, whether arising from contract or otherwise. The local law would not operate to make the goods of man to become the goods of another man; nor ought to affect their personal obligations, or existing relations between themselves; nor was it ever supposed to have such effect, until the delicate and exciting question which has caused these interferences in the British Islands arose. The local law, in these cases, dissolves no obligations or relation lawfully existing according to the laws of the ship's country. If it did, intercourse of civilized men between nation and nation must cease. Marriages are frequently celebrated in one country in a manner not lawful or valid in another; but did anybody ever doubt that marriages are valid all over the civilized world if valid in the

country in which they took place? Did any one ever imagine that local law acted upon such marriages to annihilate their obligation, if the party should visit a country in which marriages must be celebrated in another form? It may be said that, in such instances, personal relations are founded in contract, and, therefore, to be respected; but that the relation of master and slave is not founded in contract, and, therefore, is to be respected only by the law of the place which recognizes it. Whoever so reasons encounters the authority of the whole body of public law from Grotius down; because there are numerous instances in which the law itself presumes or implies contracts; and prominent among these instances, is the very relation which we are now considering, and which relation is holden by law to draw after it mutuality of obligation."

"Is not the relation between a father and his minor children acknowledged when they go abroad? And on what contract is this founded but a contract raised by general principles of law from the relation of the parties?

Your lordship will please to bear in mind that the proposition which I am endeavoring to support is that, by the comity of the law of nations, and the practice of modern times, merchant vessels entering open ports of other nations for the purpose of trade are presumed to be allowed to bring with them, and to retain for their protection and government, the jurisdiction and laws of their country. All this, I repeat, is presumed to be allowed, because the ports are open, because trade is invited, and because, under these circumstances, such permission or allowance is according to general usage. It is not denied that all this may be refused; and this suggests a distinction, the disregard of which may, perhaps, account for most of the difficulties arising in cases of this sort: that is to say, the distinction between what a state may do, if it pleases, and what it is presumed to do or not to do, in the absence of any positive declaration of its will. A state might declare that all foreign marriages should be regarded as null and void within its territory; that a foreign father, arriving with an infant son, should no longer have authority or control over him; that, on the arrival of a foreign vessel in its ports, all shipping articles, and all indentures of apprenticeship, between her crew and her owners or masters, should cease to be binding. These, and many other things equally irrational and absurd, a sovereign state has doubtless the power to do, but they are not to be presumed. It is not to be taken for granted, *ab ante*, that it is the will of the sovereign state thus to withdraw itself from the circle of civilized nations. It will be time enough to believe this to be its intention when it formally announced that intention by appropriate enactments, edicts, or other declarations."

In regard to slavery within the British territories, there is a well-known and clear promulgation of the will of the sovereign authority; that is to say, there is a well known rule of her law. As to England herself, that law has long existed; and recent acts of Parliament

established the same law for the colonies. The usual mode of stating the rule of English law is, that no sooner does a slave reach the shore of England than he is free. This is true; but it means no more than that there when a slave comes within the exclusive jurisdiction of England he ceases to be a slave, because the law of England positively and notoriously prohibits and forbids the existence of such a relation between man and man. But it does not mean that English authorities, with this rule of English law in their hands, may enter where the jurisdiction of another nation is acknowledged to exist, and there destroy rights, obligations and interests lawfully existing under the authority of such other nations. No such construction and no such effect can be rightfully given to the British law. It is true that it is competent to the British Parliament, by express statute provision, to declare that no foreign jurisdiction of any kind should exist in or over a vessel after its arrival voluntarily in her ports. And so she might close all her ports to the ships of all nations."

"A State may also declare, in the absence of treaty stipulations, that foreigners shall not sue in her Courts, nor travel in her territories, nor carry away funds or goods received for debts." "We need not inquire what would be the condition of a country that should establish such laws, nor in what relation they would leave her towards the States of the civilized world. Her power to make such laws is unquestionable; but in the absence of direct and positive enactments to that effect, the presumption is that the opposites of these things exist. While her ports are open to foreign trade, it is to be presumed that she expects foreign ships to enter them, bringing with them the jurisdiction of their own governments, and the protection of its laws, to the same extent that her ships and the ships of other commercial States carry with them the jurisdiction of their respective governments into the open ports of the world; just as it is presumed, while the contrary is not avowed, that strangers may travel in a civilized country in a time of peace, sue in its Courts, and bring away their property.

"A merchant vessel enters the port of a friendly State, and enjoys, while there, the protection of her own laws, and is under the jurisdiction of her own government, not in derogation of the sovereign of the place, but by the presumed allowance or permission of that sovereignty. His permission or allowance is founded on the comity of nations, like the other cases which have been mentioned; and this comity is part, and a most important and valuable part, of the law of nations, to which all nations are presumed to assent until they make their dissent known. In the silence of any positive rule affirming, or designing, or restraining the operation of foreign laws, their tacit adoption is presumed to the usual extent. It is upon this ground that the courts of law expound contracts according to the law of the place in which they are made; and instances almost innumerable exist in which, by the general practice of civilized

countries, the laws of one will be recognized and often executed in another. This is the comity of nations, and it is upon this, as its solid basis, that the intercourse of civilized States is maintained. But while that which has now been said is understood to be the voluntary and adopted law of nations, in cases of the voluntary entry of merchant vessels into the ports of other countries, it is nevertheless true that vessels in such ports only through an overruling necessity may place their claim by exemption from interference on still higher principles; that is to say, principles held in more sacred regard by the comity, the courtesy, or, indeed, the common sense of justice of all civilized States. Even in regard to cases of necessity, however, there are things of an unfriendly and offensive character, which yet it may not be easy to say that a nation might not do. "For example, a nation might declare her will to be, and make it the law of her dominions, that foreign vessels cast away on her shores should be lost to their owners, and subject to the ancient law of wreck. Or a neutral State, while shutting her ports to the armed vessels of belligerents, as she has a right to do, might resolve on seizing and confiscating vessels of that description which should be driven to take shelter in her harbors by the storms of the ocean. But laws of this character, however, within the absolute competence of governments, could only be passed, if passed at all, under willingness to meet the last responsibility to which nations are subjected." The presumption is stronger, therefore, in regard to vessels driven into foreign ports by necessity, and seeking only temporary refuge, than in regard to those which enter them voluntarily, and for purposes of trade, that they will not be interfered with, and that unless they commit, while in port, some act against the laws of the place, they will be permitted to receive supplies, to repair damages, and to depart unmolested. In further support of the claim of the memorialist, the undersigned begs leave to refer to the letter of Hon. Edward Everett to Lord Aberdeen, of March 1st, 1842.

In conclusion, the undersigned must express the hope that a respect for the motives of humanity, which undoubtedly influenced the functionaries at Nassau, may not lead the commissioners to overlook the equally high duty which one State owes to another. In the decision which they may give upon this delicate question, it is hoped that the commissioners will bear in mind the sound and conservative views of the great jurist before quoted. "To press forward to a great principle by breaking through every other great principle that stands in the way of its establishment, to force the way to the liberation of Africa by trampling on the independence of other States in Europe—in short, to procure an eminent good by means that are unlawful, is little consonant to private morality as to public justice. Obtain the concurrence of other nations, if you can, by application, by remonstrance, by example, by every peaceable instrument which man can employ to attract the consent of man. But a nation is not

justified in assuming rights that do not belong to her merely because she means to apply them to a laudable purpose; not in setting out upon a moral crusade of converting other nations by acts of unlawful force." (Sir W. Scott. *Le Louis*, 2 Dodson.)

EDWARD LOCKETT,
by his Attorney,
H. D. JOHNSON.

WASHINGTON, *March 15th*, 1854.

To the Honorable Commissioners appointed for the settlement of outstanding claims between the United States and Great Britain:

I have the honor to submit herewith an argument in the case of Edward Lockett, one of the owners of the slaves liberated from the brig "Creole" at Nassau, New Providence, in November, 1841. This argument is applicable to the claims of John Hagan, G. W. Apperson, Wm. H. Goodwin, James Andrews, and the Merchants' Insurance Company, all claiming indemnity for the value of slaves liberated from the same vessel, and all of which claims are represented by me as attorney. I beg leave to state, that I am in daily expectation of receiving evidence bearing upon the question of the value of some of the slaves, and upon the title of some of the claimants. This evidence, however, has no relation to the general principles involved in the case.

So far as these principles are concerned, the case is now submitted by

Your obedient servant,
H. D. JOHNSON.

Exhibit B. Letter.

WASHINGTON, *May 3d*, 1854.

To the commissioners appointed for the settlement of outstanding claims between the United States and Great Britain, London:

I have the honor to present herewith, as the attorney of Edward Lockett, certified copy of bill lading of 41 negro slaves shipped on board the Creole, being an extract from the record of the proceedings in the Commercial Court of New Orleans in the case of Edward Lockett *vs.* The Fireman's Insurance Company; and a memorandum of the valuation of said slaves; both of which papers I desire to have filed with the claim of said Edward Lockett. I also forward herewith as matter proper to be filed with my argument in the Creole cases; a pamphlet marked A, containing affidavits, examinations, &c., from the records of the Commercial Court of New Orleans, in the case of Thomas McCargo *vs.* The New Orleans Insurance Company; a pamphlet marked B, containing arguments in favor of the defendants in the Supreme Court of Louisiana, in the cases of Edward Lockett *vs.* The Merchants' Insurance Company,

of Thomas McCargo *vs.* The New Orleans Insurance Company, and of Thomas McCargo *vs.* The Merchants' Insurance Company; a printed copy of the protest of the officers and crew of the brig Creole, and newspaper accounts of the Creole affairs.

I have the honor to be, with great respect,

Your obedient servant,

H. D. JOHNSON.

Exhibit D.

Exhibit D, referred to in complainant's bill, at page 13.

To the Honorable Commissioners appointed for the settlement of outstanding claims between the United States of America and Her Britannic Majesty, in pursuance of a convention concluded on the 8th of February, 1853, and proclaimed in the United States on the 20th of August, 1853.

The memorial of James Pemberton, of the State of Louisiana, and the United States of America:

Respectfully showeth, that your memorial is the liquidator of the Merchants' Insurance Company, a corporation established by law of the State of Louisiana, and that he is empowered to demand and sue for all claims and demands due to said Merchants' Insurance Company, and that said Merchants' Insurance Company is proprietor of a claim to indemnity against the Government of Her Britannic Majesty, under the provisions of the convention between the United States of America and Her Britannic Majesty, concluded and signed by respective plenipotentiaries at London, on the 8th day of February, 1853.

Your memorialist further represents, that the main facts and principles on which he founds the claim for indemnity in behalf of said Merchants' Insurance Company, are set forth in the memorial of Edward Lockett, of the city of Savannah, claiming indemnity for the loss of slaves liberated from the brig Creole, which memorial has been presented to the Honorable Commissioners. He prays the memorial of the said Locket, *mutantis mutandi*, may be considered as a part of this memorial.

Your memorialist further represents, that Edward Locket was the owner of fifteen slaves shipped on board the brig Creole; that on the eighteenth day of November, 1841, insurance was taken by said Merchants' Insurance Company for ten thousand dollars upon the said fifteen slaves, each valued equally; that fourteen of said slaves who were on board the Creole, were liberated by functionaries of the British Government at the port of Nassau, in the Island of New Providence; that suit was brought by said Lockett against said Merchants' Insurance Company in the Commercial Court of the city of New Orleans, and judgment rendered against said company, on of January, 1843, for the sum of nine thousand three hundred and thirty-three dollars and thirty-three cents, with interest from the

tenth of March, 1842, which sum the said Merchants' Insurance Company paid to said Lockett: the deduction of six hundred and sixty-six dollars $\frac{66}{100}$ was made for the value of one slave which had returned to New Orleans.

Your memorialist further represents, that one Thomas McCargo, a citizen of the United States, was the owner of nineteen slaves shipped on board the said brig Creole; that on the 17th day of November, 1841, insurance was taken by said company on nineteen slaves, valued at eight hundred dollars each, laden on board said brig Creole; that eighteen of said last-mentioned slaves who were on board the Creole, were liberated by functionaries of the British Government at the Port of Nassau, in the Island of New Providence; that suit was brought by said McCargo, on the policy of insurance aforesaid, against said Merchants' Insurance Company, in the Commercial Court of the city of New Orleans, and that judgment was rendered against said Merchants' Insurance Company, on the of January, 1843, for fourteen thousand four hundred dollars, with interest from the tenth of March, 1842; which sum said Merchants' Insurance Company paid to said McCargo. The deduction of eight hundred dollars was made for one of the slaves insured who had returned to New Orleans.

Your memorialist therefore prays, that the two sums of $\$9,333\frac{33}{100}$, and of $14,400, amounting in the whole to twenty-three thousand seven hundred and thirty-three dollars, with interest thereon from the tenth day of March, 1842, be allowed to him for the benefit of said Merchants' Insurance Company, or to such person as may be empowered to receive the sums due to said company.

And your memorialist, as a reason for delay in not presenting this claim within six months from the first day of the meeting of the commissioners, represented that he was advised that the case of the Creole was brought seasonably before the commissioners, but was not informed of the necessity of presenting his individual claim; and further, that he resides at the distance of nearly two thousand miles from the Counsel to whom he desired to entrust the charge of his claim, and was unable to make seasonble communications with them.

H. D. JOHNSON,
Attorney for JAMES PEMBERTON,
Liquidator of the Merchants' Insurance Company.

DISTRICT OF COLUMBIA,
County of Washington.

Personally appeared the within named Henry D. Johnson, Attorney of James Pemberton, within named, and made oath that the facts stated in the within memorial are, to the best of his belief, true. Before me, this 17th April, 1854.

N. B. VAN ZANDT,
J. Peace.

Exhibit D. Letter.

WASHINGTON, *May 29th*, 1854.

To the Honorable Commissioners appointed for the settlement of claims under the convention of the 8th February, 1853:

LONDON: I have the honor to present herewith as one of the attornies of James Pemberton, liquidator of the Merchants' Insurance Company of New Orleans, a memorial praying, in behalf of said company, to be indemnified for the loss of slaves liberated from the brig Creole, which I respectfully request may be placed upon the files of your board for its action. I have written for such evidence as the claimants may wish to have presented in support of their claim, and as soon as anything of this nature is received, I shall forthwith transmit the same to you.

I am, respectfully,

Your ob'd'nt servant,

H. D. JOHNSON.

Exhibit E, referred to in Complainant's Bill at page 14.

LONDON, *9th January*, 1855.

To the Commissioners of Claims under the Convention of the 8th of February, 1853, between Great Britain and the United States.

9 LANCASTER PLACE.

The umpire appointed agreeably to the provisions of the convention entered into between Great Britain and the United States on the 8th of February, 1853, for the adjustment of claims, by a mixed commission, having been duly notified by the commissioners under the said convention, that they had been unable to agree upon the decision to be given with reference to the claim of divers persons, citizens of the United States, for the value of 135 slaves, against the Government of Great Britain, and having carefully examined and considered the papers and evidence produced on the hearing of the said claim, and having conferred with the said commissioners therein, hereby report that this claim has grown out of the following circumstances:—

The American Brig Creole, Capt. Ensor, sailed from Hampton Roads, in the State of Virginia, on the 17th October, 1841, having on board 135 slaves, bound for New Orleans. On the 7th November, at 9 o'clock in the evening, a portion of the slaves rose against the officers, crew, and passengers, wounding severely the captain, the chief mate, and two of the crew, and murdering one of the passengers. The mutineers having got complete possession of the vessel, ordered the mate, under the threat of instant death should he disobey or deceive them, to steer for Nassau, in the Island of New Providence, where the brig arrived on the 9th of November, 1841. The American Consul was apprised of the situation of the vessel. He

requested the Governor to take measures to prevent the escape of the slaves, and to have the murderers secured. The Consul received reply from the Governor stating, that under the circumstances he would comply with the request. The Consul went on board the brig, placed the mate in command in place of the disabled master, and found the slaves all quiet. About noon 20 African soldiers, with an African sergeant and corporal, commanded by a white officer, came on board. The officer was introduced by the Consul to the mate as commanding officer of the vessel. The Consul, on returning to the shore, was summoned to attend the Governor and council—who were in session—who informed the Consul that they had came to the following decision:—

1st. That the Courts of law have no jurisdiction over the alleged offences.

2d. That as an information had been lodged before the Government, charging that the crime of murder had been committed on board said vessel while on the high seas, it was expedient that the parties implicated in so grave a charge should not be allowed to go at large, and that an investigation ought therefore to be made into the charges, and examinations taken on oath, when, if it should appear that the original information was correct, and that a murder had actually been committed, that all the parties implicated in such crime, or other acts of violence, should be detained here until reference could be made to the Secretary of State to ascertain whether the parties should be delivered over to the United States Government; if not, how otherwise to dispose of them.

3d. That as soon as such examination should be taken, all persons on board the Creole, not implicated in any of the offences alleged to have been committed on board that vessel, must be released from further restraint."

Then two magistrates were sent on board, the American Consul went also; the examination was commenced on Tuesday, 9th, and was continued on Wednesday, the 10th, and then postponed until Friday on account of the illness of Capt. Ensor. On Friday morning it was abruptly and without any explanation terminated. On the same day a large number of boats assembled near the Creole, filled with colored persons armed with bludgeons. They were under the immediate command of the pilot who took the vessel into the port, an officer of the government, a colored man. A sloop or larger launch was also towed from the shore, and anchored near the brig. The sloop was filled with men armed with clubs, and clubs were passed from her to the persons in the boats. A vast concourse of people were collected on shore opposite the brig. During the whole time the officers of the government were on board they encouraged the insubordination of the slaves. The Americans in port determined to unite and furnish the necessary aid to forward the vessel and negroes to New Orleans. The Consul, and the officers and crews of two other American vessels, in fact combined with the officers, men, and passengers

of the Creole. To effect this, they were to conduct her first to Indian Quay, Florida, where there was a vessel of war of the United States. On Friday morning the Consul was informed that attempts would be made to liberate the slaves by force, and from the mate he received information of the threatening state of things. The result was, the Attorney-General and other officers went on board the Creole. The slaves identified as on board the vessel concerned in the mutiny were sent on shore, and the residue of the slaves were called on deck by direction of the Attorney-General, who addressed them in the following terms: "My friends," or "my men, you have been detained a short time on board the Creole, for the purpose of ascertaining what individuals were concerned in the murder. They have been identified, and will be detained; the rest of you are free and at liberty to go on shore, and whenever you please. The liberated slaves, assisted by the magistrates, were then taken on board the boats, and when landed were conducted by a vast assemblage to the superintendent of police, by whom their names were registered. They were thus forcibly taken from the custody of the master of the "Creole," and lost to the claimants.

I need not refer to authorities to show that slavery, however odious and contrary to the principles of justice and humanity, may be established by law in any country, and having been so established in many countries it cannot be contrary to the law of nations. The "Creole" was on a voyage sanctioned and protected by the laws of the United States, and by the law of nations. The right to navigate the ocean could not be questioned, and, as growing out of that right, the right to seek shelter or enter the ports of a friendly power in case of distress or any unavoidable necessity.

A vessel navigating the ocean carries with her the laws of her own country, so far as relates to the persons and property on board, and to a certain extent, even in the ports of the foreign nations she may visit. Now, this being the state of the law of nations, what were the duties of the authorities at Nassau in regard to the "Creole?" It is submitted the mutineers could not be tried by the courts of that Island, the crime having been committed on the high seas. All that the authorities could lawfully do, was to comply with the request of the American Consul, and keep the mutineers in custody until a conveyance could be found for sending them to the United States. The other slaves, being perfectly quiet and under the command of the captain and owners, and on board an American ship, the authorities should have seen that they were protected by the laws of nations, their rights under which cannot be abrogated or varied either by the Emancipation Act, or any other Act of the British Parliament. Blackstone, 4th volume, speaking of the law of nations states, "Whenever any question arises which is properly the object of its jurisdiction, is here adopted in its full extent by the common law."

The municipal law of England cannot authorize a magistrate to violate the law of nations by invading with an armed force the vessel

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of a friendly nation that has committed no offence, and forcibly dissolving the relations which by the laws of his country the Capt. is bound to preserve and enforce on board. These rights, sanctioned by the law of nations, viz., the right to navigate the ocean and to seek shelter in case of distress or other unavoidable circumstances, and to retain over the ship, her cargo, and passengers the laws of her own country, must be respected by all nations, for no independent nation would submit to their violation.

Having read all the authorities referred to in the arguments on both sides, I have come to the conclusion that the conduct of the authorities at Nassau was in violation of the established law of nations, and that the claimants are justly entitled to compensation for their losses. I therefore award to the undermentioned parties, their assigns, or their legal representatives, the sums set opposite their names, on the fifteenth January, 1855, viz:—

"To Edward Locket, twenty-two thousand two hundred and fifty dollars.

"To John Pemberton, liquidation of the Merchants' Insurance Company of New Orleans, twelve thousand four hundred and sixty dollars.

"To John Hagan, eight thousand dollars.

"To William H. Goodwin, for self and Thomas McCargo, twenty-three thousand one hundred and forty dollars.

"To G. H. Apperson and Sherman Johnson, twenty thousand four hundred and seventy dollars.

"To P. Rotchford, two thousand one hundred and thirty-six dollars.

"To John Pemberton, liquidation of Merchants' Insurance Company of New Orleans, sixteen thousand dollars.

"To James Andrews, five thousand eight hundred and seventy-four dollars. Making together one hundred and ten thousand three hundred and thirty dollars.

JOSHUA BATES,
Umpire.

Certificate of Sect. of State.

UNITED STATES OF AMERICA,
Department of State.

To all to whom these presents shall come, greeting.

I certify that the papers attached hereto are true copies, carefully compared with the originals filed in this department, in the matter of the claim of Edward Lockett and others, for indemnity for the loss of slaves liberated from the brig Creole.

In testimony whereof, I, William L. Marcy, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed. Done at the City

of Washington this nineteenth day of June, A. D. 1853, and of the independence of the United States of America the 79th.

[DEPARTMENT OF STATE SEAL.] W. L. MARCY.

Order for Injunction.

On the back of said bill was the following indorsement:—

To J. A. Smith, Esq.,

Cl'k Cir't Co't Dt. of Col'a.

Order for injunction.

On filing this bill with the Exhibits, and on complainants giving bond to defendant Pemberton in the penalty of $2,130, with usual condition, with surety to be approved of by one of the judges of this Court, let injunction issue as prayed.

JAS. S. MORSELL,
Ass't Judge, &c.

20th June, 1855.

And the complainants filed the following bond:—

(*Inj'ct. Bond.*)

Injunction bond.

Know all men by these presents that we, James J. Berret, Henry D. Johnson, John L. Hays, and William H. Thomas, all of the City of Washington and District of Columbia, are held and firmly bound to John Pemberton, of the City of New Orleans and State of Louisiana, Liquidator of the Merchants' Insurance Company, in the sum of two thousand one hundred and thirty dollars, to be paid to the said John Pemberton or his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the twenty-first day of June, A. D. 1855.

Whereas, the above bounden James G. Berret and Henry D. Johnson, together with Edward Lockett, are about to sue forth a writ of injunction from the Circuit Court of the District of Columbia, sitting in chancery, enjoining the said John Pemberton, liquidator of the Merchants' Insurance Company aforesaid, his attorney, agents, servants, and all others claiming to act under him, or by authority derived from him, or any agent, attorney, representative, or assigns of said Merchants' Insurance Company, not to demand or receive the remaining half of an award made to John Pemberton, liquidator aforesaid, made by commissioners appointed in pursuance of a convention made on the 5th day of February, 1853, between the Government of the United States and Great Britain, for the adjustment of claims of citizens of the United States against the British Government and of subjects of Great Britain against the United States, the remain half of said award being the sum of four-

teen thousand two hundred and thirty dollars, subject to a deduction of five per cent., and enjoining one William L. Marcy, to whom the amount of said award has been entrusted for payment to the parties entitled thereto, to any other persons than said Berett, Johnson and Lockett. Now the condition of this obligation is such, that if the said James G. Berrett, Henry D. Johnson and Edward Lockett shall prosecute the said writ of injunction with effect, and satisfy and pay all costs, damages and charges that shall accrue in the said Court, or be occasioned by the issuing of said writ of injunction, including lawful interest upon said sum, unless the said Court shall otherwise decree, and shall in all things obey such order and decree as the said Court shall make in the premises, then the above obligation shall be void; otherwise the same shall be and remain in full force and effect.

JAMES G. BERRET, [SEAL.]
HENRY D. JOHNSON, [SEAL.]
JOHN L. HAYS, [SEAL.]
WM. H. THOMAS, [SEAL.]

Signed, sealed, and delivered in presence of
L. TREE,
RICHD. LAY.

I, John Hays, hereby certify that the sureties above named, to wit, said Hays and Thomas, are amply sufficient for the payment of the penalty of the above bond.

JOHN L. HAYS.

Approved. JAS. S. MORSELL.
21st June, 1855.

Thereupon, subpœna and injunction issued as prayed, and said cause was regularly continued until the 27th day of May, 1856, when the defendant Pemberton, by Robert J. Brent, Esq., his solicitor, filed in Court here the following answer and Exhibits:—

Defendant's Answer.

The answer of John Pemberton, Liquidator of "the Merchants' Insurance Company," to the bill of complaint of Edward Lockett, Henry D. Johnson, and James G. Berrett.

This respondent, saving and reserving the benefit of each and every exception to the bill of complaint, for or on account of the manifold inconsistencies, uncertainties and insufficiences thereof, for answer unto so much thereof as it is material to answer, saith, that this respondent, as liquidator aforesaid, did sign and execute the contract stated and set forth in the said bill of complaint; but whether the said contract is *valid in law*, or whether this respondent was legally authorized to bind or effect the interests of "the Merchants' Insurance Company" by the terms and effects of said contract or agreement, he submits to the decision of this honorable Court. This

respondent further showeth, that by the terms of said agreement the complainants were bound to give their *joint* and several services, and their "best exertions in the prosecution of said claim," before they could be entitled to recover the compensation therein stipulated. Your respondent is not aware, and does not admit that the convention, concluded the 8th February, 1853, between her Britannic Majesty and the United States, was brought about and procured by or through the services of the complainants, in whole or in part: but this respondent showeth and avers that, in consequence of said convention and the sitting of the commission thereby established, it became necessary to employ counsel in London, where said commission was held; and your respondent did accordingly employ other counsel in London, at great expense, as he is prepared to prove. Your respondent further showeth that the complainants, or two of them, at the date of said contract or agreement, resided in Washington City, and were prosecuting the business of agents for the recovery of claims prosecuted, and to be prosecuted in Washington City, and said contract was entered into as aforesaid, for the service of said complainants, to be rendered in Washington City, and the said compensation was agreed upon in the event of a recovery of said claim, as against the United States, by means of their services and exertions, to be rendered in Washington City as aforesaid, where the said complainants believed and represented that said claim could be prosecuted and recovered, as against the United States; but this respondent further showeth, that by said convention it became and was necessary for this respondent to employ counsel in London to prepare and argue said claim, as against the Government of Great Britain, before the commission to be held in that place under said convention: and he avers and charges that his said contract was ended and determined by the necessity which thus arose to transfer the prosecution of said claim to London, and to employ other counsel there.

This respondent further showeth that from the time of the concluding of said convention in February, 1853, the complainants remained silent and inactive, doing nothing towards the prosecution of said claim, and giving no notice to this respondent, except as hereinafter shown, of the establishment of such convention, or of any purpose on their part, assume and take charge of the prosecution of said claim in London; and taking no steps to procure or obtain the necessary evidence to support said claim; that supposing and believing that his said agreement was no longer in force or applicable under the change of circumstances thus occasioned by the terms of said convention, and being ignorant and unadvised of the intention of the complainants to conduct the prosecution of said claim in London, at so great a distance from their residence, although a reasonable time had elapsed for the complainants so to advise and inform him, this respondent did, as it was his duty under the circumstances, employ able and competent counsel in England to take charge

of and conduct the prosecution of said claim; and your respondent avers that said counsel did, in conjunction with the land agent employed by the Government of the United States to represent said claim, and all others in behalf of citizens of the United States, under said convention, render efficient services, and did properly and with the privity and assent of said law agent, present the evidence on which said claim was finally allowed, and in consideration of such services, and the retainer of said counsel in England, your respondent paid them a large sum of money for their compensation in the premises, as he was bound to do.

Your respondent further showeth that, by the terms of said convention, and the second article thereof, all claims on the part of citizens of the United States were to be presented to the commissioners upon such evidence and information only as should be furnished by or on behalf of the Government of the United States, and the commissioners were to hear, if required, one person as counsel, or agent for the said government, on each and every separate claim; and, by the third article of said convention, every claim was required to be presented within six months from the day of the first meeting of said commissioners, unless satisfactory reasons for such delay should be shown to said commissioners, or to the umpire, in case of their disagreement, who were to decide whether said claims, or any of them, had been duly presented.

Your respondent further showeth that, although the said convention was concluded on 8th February, A. D. 1853, and duly proclaimed in the United States on the 20th August, A. D. 1853, no steps whatever, with a view to the prosecution of said claim, were taken by the complainants, or any of them, until the 15th December, 1853, when the complainant, Lockett, wrote a letter of that date to this respondent, as appears by a copy thereof, herewith filed, marked "Defendants' Exhibit A," recorded at page 96, prayed to be taken as a part of this answer: That by said letter the said Locket declared that he had transferred his authority to act in the premises to the complainant Johnson, and proposed that this respondent should execute a separate power of attorney to the said Johnson, for the purpose of enabling said Johnson to act separately in the prosecution of said claim; which proposal your respondent declined, not considering that said parties, or any of them, were authorized to act further under the original agreement; and that if they were authorized, that said Lockett could not transfer his authority or agency to said Johnson *alone.*

This respondent further showeth that he heard nothing more from said complainants until he received a letter from said complainant Johnson, dated 22d March, 1854, a copy of which, marked "Defendants' Exhibit B," recorded at page 97, is herewith filed, and prayed to be taken as part of this answer: That by said two letters it appeared to this respondent that the two complainants, Lockett and Berrett, had declined any further connection with the

prosecution of said claim, and said Johnson intended to act *alone*, in violation of the terms of the original contract, even if the same should be considered in force at that time; and it further appeared, that said Johnson, claiming so to act *alone* and *separately*, had not, even at that late date, filed said claim, although, as your respondent charges, the said commission had been in session for some time, and had not, until that date, applied or thought of applying for the necessary evidence in support thereof: That it further appears by said last letter that said Johnson was willing to receive a compensation of twenty-five per cent. in case he acted alone, and that said Johnson did not, at that date, claim any right, under said original contract made with the three complainants, to render his personal services in prosecuting said claim *alone* and separately from said Lockett and Berrett, but he was willing and proposed to make a new contract with this respondent for twenty-five per cent. as a commission for such services as said Johnson might separately and alone render in consequence of the intention of said Lockett and Berrett no longer to give their personal assistance and services jointly with said Johnson in the prosecution of said claim. "To this letter your respondent made no reply whatever, because of the dilatory conduct of said parties, and the declension of two of them longer to act: but more especially because he considered the original agreement as no longer in force, and he had, *at that time*, taken steps necessary to retain counsel, resident in London, to file the necessary evidence, and to aid and assist, as far as necessary or proper, the law agent or counsel appointed by the Government of the United States, to represent all claims of citizens of the United States, under said convention.

Your respondent further showeth that notwithstanding the premises the said Johnson did, as shown in "Exhibit D," filed with bill of complaint, on the 17th April, 1854, at Washington City, swear to a memorial prepared by him, in the name of your respondent, in which the said Johnson admits, by his affidavit thereto appended, that he had not filed, or caused to be filed, the memorial or claim of your respondent within the time prescribed by said convention, and assigns reasons therefor wholly unsatisfactory and insufficient to excuse such delay; but this respondent further showeth that, with full knowledge on the part of said Johnson on the 17th day of April, 1854, that the memorial sworn to by him on that day was even then excluded and barred by law, in consequence of his laches and neglect in the premises, even if he was the authorized attorney of your respondent, as he claimed to be, and that said memorial could not be heard or considered by said commissioners, unless they should decide the reasons for such delay, as sworn to by said Johnson, to be satisfactory; yet the said Johnson, negligently and improvidently (as shown by the copy of the letter filed as part of "Exhibit D," with said bill of complaint), retained and kept back said memorial until the 29th May, 1854, when for the first time he transmitted said claim

to said commissioners, and even then he transmitted the same without any evidence whatever, to prove the amount and particulars of said claim; thereby, as your respondent avers and charges, jeopardizing the whole amount of said claim, in case its prosecution and conduct had depended on the agency of said complainants or any of them.

Your respondent charges that the judicial evidence on which said claim was submitted to the commissioners, and ascertained and allowed by the umpire, was filed and exhibited by the counsel resident in London, and duly employed by this respondent for that purpose.

And your respondent further showeth and charges, that all that was done by said Johnson, in respect to said claims, was the transmission of said memorial, and afterwards, some printed papers in relation thereto, which, as your respondent charges, were not judicial evidence in support of said claim, and the transmission of a written argument, which the said Johnson transmitted to said commissioners as counsel of said Lockett in respect to a claim filed by said Lockett in his own right, under said convention, and which said argument the said Johnson, by his letter of 15th March, 1854, to said commissioners claimed to be applicable to the other claims, including "the Merchants' Insurance," which he claimed to represent as attorney.

Your respondent is advised and charges, that by reason of the premises the said written agreement was rescinded, extinguished and gone, by the convention aforesaid; and if not, that the claim has not been performed or kept by the complainants, who did not use their best exertions in the prosecution of said claim, and that the same does not entitle the complainants to the relief prayed for, or to any other relief whatever.

Your respondent further charges, that under and by virtue of said convention, the government of the United States undertook to furnish and did furnish able and competent counsel to represent said claim, among others, and that said Johnson had no right to act as counsel in said case, and there was no legal consideration for his alleged services in the premises.

Your respondent further showeth and charges that said contract and agreement is, on its face, illegal and void, and contrary to law, by reason of the maintenance and champerty therein set forth and provided for; but if the same should be held and decreed to entitle the complainants to the compensation therein stipulated for, then your respondent charges that the complainants have full and adequate remedy in the premises at law.

Wherefore, your respondent prays to be hence dismissed with costs, &c., &c.

ROBERT J. BRENT,
for Respondent,
JOHN PEMBERTON.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans.

Before me, U. S. District Judge for the Eastern District of Louisiana, personally appeared John Pemberton, the foregoing respondent, and made oath on the Holy Evangelist of Almighty God, that the facts above set forth are true to the best of his knowledge and belief.

JOHN PEMBERTON.

Sworn to and subscribed before me this 14th day of May, A. D. 1856.

THOMAS H. McCALEB,
Lou's Dist. Judge Eastern Dist. of Louisiana.

Def'dts Exhibit A.

Defendant's Exhibit A, referred to in his answer to complainant's bill at page 90.

SAVANNAH, Dec. 15th, 1853.

Mr. JOHN PEMBERTON, Pres't Merchants' Ins. Co., N. Orleans.

Dear Sir: Enclosed please find a power of attorney to H. D. Johnson, which please sign and forward to him without delay; he is anxious to leave soon for London, and desires to carry the papers with him. The power given me by you, previous to my departure from N. Orleans, my attorney thinks not so desirable as the one enclosed. Mr. Johnson visits London for the interest of all concerned, and I have concluded to transfer the authority to settle the matter to him; you will please conform as strictly as possible to the usages and law of Louisiana in making out the form: sign it before a notary public and have his seal attached; also have it certified to by clerk of the court. If possessed of any information or facts bearing favorably on the case please state them; also furnish Mr. Johnson with a statement of your claim separately.

Very respectfully your ob't ser't,

E. LOCKETT.

Defendant's Exhibit B.

Defendant's exhibit B, referred to in his answer to complainant's bill at page 91.

WASHINGTON, March 22d, 1854.

John Pemberton Esq., liquidator of the Merchants' Ins. Co., New Orleans.

Dear Sir: Acting under a power of attorney given by you to Messrs. Lockett, Berret and myself, Mr. Lockett not being present and Mr. Berret being unable to attend to the business in consequence of his appointment as Postmaster of this city, I have prepared a memorial in behalf of the Merchants' Insurance Co. for the recovery of the sums paid by said oompany on the insurance of slaves libe-

rated from the Brig "Creole," which memorial I shall be ready to forward to the commissioners sitting at London, as soon as I can receive the evidence necessary to accompany it. I have now charge of nearly all the other claims in this case. From conversations which I have had with your senator, Mr. Benjamin, I understand that you are dissatisfied with the rate of compensation originally agreed upon. If so, I am prepared to proceed for a commission for myself alone of 25 per cent. I stated to Mr. Benjamin that I would enter into such an arrangement, and he thought you would be willing to accede to it. If the offer is satisfactory to you, please forward to me at once the original policies of insurance, and all papers and proofs that can be obtained, necessary to substantiate the claim before the commission, no reply made.

Very respectfully your ob't ser't,

H. D. JOHNSON.

WASHINGTON, 18th January, 1854.

LEVI PERCE, Esq, New Orleans.

My Dear Sir: Your favor of 23d ult'o was only received two days ago, and I know not to what cause to attribute the delay. It will be impossible for me to be of any service to the company in this matter; you are aware that at the called session of the senate in March last a convention was ratified, which provided that all claims pending between this government and that of Great Britain should be submitted to a joint commission. That commission is now sitting in London, and Joshua Bates, of the house of Baring Brothers & Co., has been selected by the two commissioners as umpire. It is before that commission that the company must urge its claim, and I believe there is little time to be lost: under the circumstances, it seems to me that the best course for the company to pursue is to make up a statement of its claim, accompanied by all the documents and vouchers in its possession, and get E. J. Fastall, or some other gentleman having good correspondents in London, to forward the papers, with instruction to employ a gentleman of the bar there. If the claim is filed in time, I have no doubt delay will be granted to procure the proper evidence afterwards, and the lawyer employed in London will have time to correspond with the company on the subject.

I am sorry that I can be of no use to you in the matter. I need not say how happy I shall be to get an opportunity on any occasion to testify to you the warm regard of

Your friend and servant,

J. S. BENJAMIN.

P. S. I inclose you the papers sent me, as you may possibly require to use them.

Said cause was continued at Rules to November, when the complainant's solicitor aforesaid filed in Court here the following general replication, to wit:—

General Replication.

The complainants, saving and reserving to themselves all and all manner of exceptions, &c., for replication to the answers of said defendant saith, that he doth and will aver, maintain and prove his said bill to be true and sufficient in law to be answered unto by said defendants, and that the answers are very evasive, uncertain, and insufficient in the law to be replied unto by the repliant, without, &c.

JOSH. H. BRADLEY,
Sol. for Compl'ts.

And said cause was continued at Rules until 22 and 29 January, when the complainants, by their solicitor aforesaid, filed in Court here the following interrogatories and cross-interrogatories:—

CIRCUIT COURT FOR THE DISTRICT OF COLUMBIA.

EDWARD LOCKETT, JAMES G. BERRET, HENRY D. JOHNSON,
vs.
The HON. WM. L. MARCY, and JOHN PEMBERTON, Liquidator of Merchants' Insurance Company.

In Equity.

Interrogatories to be propounded to John A. Thomas, Assistant Secretary of State, a witness for complainants in the above suit.

Interrogatory 1st. Were you the law agent of the United States before the commission established under a convention made on the 8th day of February, 1853, between the governments of the United States and Great Britain, for the adjustment of claims of citizens of the United States against the British government, and of subjects of Great Britain against the United States?

Interrogatory 2d. Were you familiar with the Creole case before said commission? if so, state whether said case was considered and discussed before said commission as a single case; state how said case was docketed; state whether the main parts and principles of law necessary to establish in behalf of the claimants in said case were common to all the cases of claimants for the value of slaves freed from the Creole; state what were the principal points in dispute.

Interrogatory 3d. Was complainant, Henry D. Johnson, an attorney for the claim of the Merchants' Insurance Company, before said commission?

Interrogatory 4th. State by whose memorial the facts in the Creole case were first presented to the commission, who was the attorney for such memorialist, whether or not he filed an argument in said case and presented proofs and evidence, and whether any other memorial, evidence, or argument was before the commissioners when the case was considered by them.

Interrogatory 5th. Was there any appearance before said com-

mission in said case, other than that of said Johnson, at the time when the American commission decided in favor of the claim?

Interrogatory 6th. State whether the argument filed by the attorney in said case, was expressly and by reference made applicable to the case of the Merchants' Insurance Company.

Interrogatory 7th. State whether or not a memorial was filed by said Johnson in behalf of John Pemberton, Liquidator of the Merchants' Insurance Company, and if said memorial was received in season.

Interrogatory 8th. State whether or not, in presenting the Creole case to the umpire, you referred to or derived any aid from an argument filed in said case by Henry D. Johnson, and which was in terms to be applicable to the claim of the Merchants' Insurance Company.

Interrogatory 9th. State whether anything was omitted to be done by said Johnson as the attorney of said Pemberton, which was necessary for the recovery of the claim of said Pemberton.

Interrogatory 10th. State whether or not a memorial was filed by a London solicitor named . State whether or not said memorial was signed or sworn to, and whether or not it was defective in any reports, and if so, in what, and whether any use was made of said memorial before said commission.

Interrogatory 11th. State whether or not any arguments or proofs were furnished by said London Solicitor.

Interrogatory 12th. State whether or not, in making up the amount to be awarded to said Pemberton, reference was made to the memorial filed by said Johnson in behalf of said Pemberton.

Interrogatory 13th. State whether or not if the claim of said Pemberton had depended alone upon the memorial, proofs and arguments filed by said London Solicitor, there would have been sufficient data and grounds for an award in his favor under the practice adopted by the commission.

Interrogatory 14th. Do you know, or can you set forth any other matter or thing which may be of any benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. H. LAWRENCE,
Sol. for Compl'ts.

Cross-interrogatories to be propounded to said John C. Thomas.

1. State the date when the memorial of Edward Lockett was filed before said commissioner at London, and whether any separate memorial and proofs were presented before said commission in behalf of the claim of the Merchants' Insurance Company, and if such were presented, state what and by whom, and specify what said proofs were as nearly as you can recollect.

2d. State whether said Johnson made any other argument before said commission than a written one, and whether he made any other argument in the case of the claim of the Merchants' Insurance Company, than by endorsing on the written argument submitted by him in behalf of Edward Lockett, that the said argument was to be applied also to the claim of said Insurance Co.

3d. State whether or not said Johnson ever filed, before said commission, any written proofs or documentary evidence touching the particulars or amount of the claim of the Merchants' Insurance Company, and if so, state what said proofs and evidence consisted of, and when the same were filed before said commission, and where the originals now are, and why the same are not produced.

4th. State whether or not the proofs and evidence in support of the particulars and amount of the claim of said Merchants' Insurance Co. was not filed or exhibited by English solicitors or counsel, and particularly by Messrs. Trinder & Eyne.

5th. You state that after the decision of the claims, Mr. Eyne, a London solicitor, handed or brought to your notice a copy of a paper purporting to be an extract from the proceedings of the Commercial Court of New Orleans *vs.* The Merchants' Insurance Company: please state whether said copy was not authenticated under seal of said Court, and whether the same did not show the amount of damages recovered by said McCargo against said company by the insurance of certain slaves shipped on the Creole, and state if said copy was or was not, to your knowledge, filed before said commissioners or the umpire before the award was made, fixing the amount of the claim allowed to said Insurance Co., or its liquidator, and state whether said printed copy shown you by said Johnson, as stated in your fourteenth answer, was authenticated by any seal of any court, or was anything but an unofficial printed paper.

6th. State whether or not full and official copies of all proceedings and documents filed with or before said commission or the umpire, are not now on file in the proper department in Washington City, and if any documents are not filed in Washington City, specify which, if any are omitted.

R. J. BRENT,
for Def't.

CIRCUIT COURT FOR THE DISTRICT OF COLUMBIA.

EDWARD LOCKETT
vs.
WM. L. MARCY, and JOHN PEMBERTON, Liquidator.
In Equity.

To the Honorable James Dunlap, Chief Justice of the Circuit Court for the District of Columbia: Your petitioners, Edw'd Lockett, James G. Berrett, and Henry D. Johnson, complainants in the above entitled suit, respectfully represent that it is material for them

to take the testimony of witnesses upon the interrogatories which have been filed in this Court, and notice of which interrogatories was sent to the defendants' counsel, Robert J. Brent, Esqr., of Baltimore, by A. H. Lawrence, your petitioners' counsel, on the 6th day of February, instant, in time for the mail of that day. Your petitioners suggest to your Honor that Nicholas Callan is a competent and proper person to take such testimony.

EDWD. LOCKETT,
JAS. G. BERRETT,
HENRY D. JOHNSON,

By their Attorney,

A. H. LAWRENCE.

Sworn to before me, by A. H. Lawrence, this 18th day of February, 1857.

JAS. DUNLAP.

It is hereby ordered, that a commission issue to Nicholas Callan to take testimony upon the interrogatories file..

JAS. DUNLAP.

Thereupon commission issued by consent to Nicholas Callan to take depositions, and afterwards said commissioner to whom the said commission were issued, makes return thereof in the words and figures following, to wit:—

DISTRICT OF COLUMBIA, to wit:

The United States of America to Nicholas Callan greeting:

Know ye that you are appointed commissioner to examine evidence in a cause depending in the Circuit Court for the County of Washington, in the District of Columbia, between Edward Lockett, James G. Berret, and Henry D. Johnson, complainants, and the Honl. William L. Marcy and John Pemberton, Liquidator of the Merchants' Insurance Company, defendants.

Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall convenient, you cause to come before you all such evidences as shall be named or produced to you by either the complainants, plaintiffs or defendants, and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid, in reply to the interrogatories and cross-interrogatories hereto annexed, and having reduced the depositions of the witnesses so taken by you into writing, you send the same with this commission, closed under your hand and seal, to the judges of the said Circuit Court, with all convenient speed.

Witness the Honorable James Dunlap, Chief Judge of the said Court, the 12th day of January, in the year of our Lord one thousand eight hundred and fifty-seven.

Issued the fifth day of February, 1857.

JNO. A. SMITH,
Clk.

Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined, by virtue of the commission hereto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to and left with you by either of the said parties, so help you God.

N. CALLAN.

Sworn to and subscribed before me, this 6th of Febr'y, 1857.

F. S. MYERS,
J. P.

DISTRICT OF COLUMBIA,
Washington County, to wit:

Deposition of Genl. John A. Thomas, whose testimony is alleged to be necessary to the complainants hereinafter named, taken and subscribed before me, Nicholas Callan, a commissioner duly appointed for that purpose in pursuance of a commission, and upon the interrogatories and cross-interrogatories hereunto annexed, issued out of the Circuit Court for the County of Washington, in the District of Columbia, on the equity side thereof, to be read as evidence in a certain cause depending in the said Court, wherein Edward Lockett, James G. Berret, and Henry D. Johnson are complainants, and the Hon. William L. Marcy, and John Pemberton, Liquidator of the Merchants' Insurance Company, are defendants. Genl. John A. Thomas, a witness known to me to be of lawful age, being to me produced, at the County of Washington and District of Columbia, on the 6th day of February, A. D. 1857, and being by me first duly sworn, and cautioned to speak the whole truth, did then and there, upon his oath aforesaid, depose and answer each and all the annexed interrogatories which were separately put and read to him by me, as follows, to wit:

Answer to first interrogatory. I was such agent.

Answer to the second interrogatory. I was familiar with the Creole case before said commission. It was considered and discussed as a single case, and not in the name of particular claimants; it was docketed the Creole case; the main points and principles of law necessary to be established in behalf of the claimants in said case,

were common to all the cases of the claimants. The general question involved was, whether the British Government were responsible for the acts of its agents in liberating the slaves on board the Creole, which had been driven in by distress into the British port of Nassau, on account of mutiny.

Answer to the third interrogatory. He was the attorney in the case of the Merchants' Insurance Company, before said commission.

Answer to the fourth interrogatory. The memorial of Edward Lockett, which memorial was transmitted to me by Henry D. Johnson; said Henry D. Johnson was the attorney. He filed an argument, and presented evidence and proofs in this case. There was no other argument presented to the commission, except that which I made verbally. There was another memorial presented to me as the agent of the United States, but it contained no argument and no minute statement of the case, and was not signed nor sworn to by any person, and I did not refer to it in the argument; it, however, went before the commissioners when the papers were placed in their hands.

Answer to the fifth interrogatory. At the first argument there was no appearance of any attorney for the claimant, except that the said H. D. Johnson, the commissioners differed in opinion, and the case was referred to the umpire for his decision. It was re-argued before him for two days. On the second day, when I was near the conclusion of my reply, finding some difficulty in turning to a case in first Dodson which I had noted, the book was handed to me by a person in the audience with the page I desired turned down. I took the book, and at the same time asked him on whose behalf he was there. He replied that he was the clerk of Mr. Trindee and Eyre, who were attorneys for some parties interested in the case. After my argument was concluded, Mr. Eyre (who had in the meantime came in) addressed me and said he was an attorney in the case. I expressed to him my regret that I had not known it before, as I would have availed myself of his services.

Answer to the sixth interrogatory. It was.

Answer to the seventh interrogatory. It was filed in season in behalf of said Pemberton by said Johnson.

Answer to the eighth interrogatory. I did refer to and make applicable the argument of Henry D. Johnson to the claim of the Merchants' Insurance Company. Indeed I relied principally on the argument of Henry D. Johnson, and read the whole of it to the umpire; it was long and the points elaborately discussed.

Answer to the ninth interrogatory. I am not aware that anything was omitted to be done by said Johnson as attorney, which could have aided or benefited said Pemberton's case before the commission.

Answer to the tenth interrogatory. There was a memorial filed by Trindee and Eyre, which is the same memorial referred to in the latter part of my answer to the fourth interrogatory. It was not signed or sworn to, and did not set forth any facts or arguments

calculated to aid me, and I made no use of it, but, as I before stated, placed it before the commissioners with the other papers.

Answer to the eleventh interrogatory. No argument nor proofs were furnished by said London solicitors.

Answer to the twelfth interrogatory. In making up the award to the said Pemberton, reference was made to the memorial filed by said Johnson in behalf of said Pemberton.

Answer to the thirteenth interrogatory. In my opinion there was not sufficient proofs and arguments filed by said London solicitor to obtain an award in favor of said Pemberton without those furnished by said Johnson. All the aid of any advantage to me was derived from or through said Johnson.

Answer to the fourteenth interrogatory. I would state that I have some recollection that Mr. Eyre presented to me or brought to my notice after the award was made, a copy of a paper which purported to be an extract from the proceedings of the Commercial Court of New Orleans in the case of McCargo *vs.* Merchants' Insurance Company, but if I could have made any use of it, it was too late, for the decision had been made. The same information had, however, been furnished to me in a printed form by H. D. Johnson. This is all that I remember about the matter.

J. A. THOMAS.

N. CALLAN,
Com.

DISTRICT OF COLUMBIA,
Washington County, to wit.

I, Nicholas Callan, duly appointed commissioner by the order and commission of the Circuit Court for the County of Washington, in the District of Columbia, to me issued and hereto annexed to take the testimony of witnesses in the case in the caption mentioned *mentioned*, do hereby certify that the foregoing deposition of John A. Thomas, the witness in said commission or interrogatories mentioned, was taken before me on this sixth day of February, A. D. 1857, at the time and place in the caption hereof mentioned, that the examination, responses and statements of said witness was made in answer to the interrogatories annexed to said commission, which were severally propounded to said witness by me, and that the answers thereto were reduced to writing by me, and by the said witness sworn to and subscribed in my presence at the time and place aforesaid, and that said deponent is a resident of the County of Washington, in the District of Columbia.

In testimony whereof, I, Nicholas Callan, commissioner as aforesaid, do hereunto set my hand and seal at my office in the City of Washington and County of Washington, in the District of Columbia, this sixth day of February, A. D. 1857.

N. CALLAN,
Commissioner.

And afterwards, to wit, on the 21st day of February, 1857, at the same place, before me personally appeared the said John A. Thomas, who, having been already sworn and cautioned to speak the whole truth, did then and there, upon his oath aforesaid, depose and answer each and all of the annexed cross-interrogatories, which were separately put and read to him by me as follows:—

Answers to the Cross-interrogatories by Gen'l John A. Thomas.

Answer to first cross-interrogatory. I received the memorial of Edward Locket on the 21st January, 1854, and acknowledged its receipt on the 24th day of same month. I was then in Paris, and to the best of my recollection it was not presented until the 14th of March following. There was a separate memorial presented in behalf of the Merchants' Insurance Company by H. D. Johnson, which was received prior to the 13th of June, 1854, as that is the date of my letter acknowledging its receipt. In regard to the proofs received in this case, it appears from my official letter to the State Department, that I acknowledged on the 3d April, 1854, the receipt of a letter transmitting from H. D. Johnson, Esq., papers relative to the claims arising in the case of the Brig Creole. These were, to the best of my recollection—

1st. Official copies of original papers on file in the Department of State.

2d. Public documents, containing correspondence and evidence in the case of the Creole.

3d. Printed documents, containing evidence before the Commercial Court of New Orleans, in the case of Thomas McCargo *vs.* The New Orleans Insurance Company. I know I received these papers from him, and I believe it was at this time. These proofs were applicable to the claim of the Merchants' Insurance Company, and were applied by me to all the claims in the case of the Creole. It appears, also, from my official letter of the 31st May, that I acknowledged the receipt of a letter from the State Department, dated the 5th May, transmitting a letter from H. D. Johnson to the Commissioners, which letter was accompanied by a certified copy of a bill of lading for forty-one negroes.

A pamphlet, marked A, and containing affidavits, examinations 0, from the records of the Commercial Court of New Orleans, in the case of Thomas McCargo *vs.* The New Orleans Insurance Company.

A pamphlet, marked B, containing arguments in the Supreme Court of Louisiana, in the cases of Edward Locket *vs.* The Merchants' Insurance Company, of Thomas McCargo *vs.* The New Orleans Insurance Company, and Thomas McCargo *vs.* The Merchants' Insurance Company, a printed copy of the protest of the officers and crew of the brig Creole, and newspaper accounts of the Creole affair.

Answer to second cross-interrogatory. Said Johnson made no other argument before the Commissioner except a written one, which I have before referred to in my direct examination, and which he re-

quested, in writing, should be applied to the Insurance Company as well as in other cases of the Creole.

Answer to third cross-interrogatory. I have stated in my answer to the first cross-interrogatory what proofs were sent to me by Mr. Johnson, touching the particulars in regard to the Merchants' Insurance Company, and when they were filed. This is all I now recollect on this point; these papers were all turned over by me to the Commissioners, and they are not on file in the Department of State, nor do I believe they have ever since reached the Department.

Answer to the fourth cross-interrogatory. No proof or evidence in support of the particulars and amount of the claim of the Merchants' Insurance Company were filed by Messrs. Tender & Eyre, or other English solicitors, until after the case was argued by me and finally submitted by me for decision, except a memorial which I referred to in my direct examination, and which was not signed or dated. On the eleventh day of January, 1855, Messrs. Tender & Eyre submitted to me a memorandum in which they distinctly refer to the memorial of H. D. Johnson, for the purpose, as they stated, of correcting the award; this memorandum is now on file in the State Department.

Answer to the fifth cross-interrogatory. The paper purporting to be an extract from the proceedings of the Commercial Court of New Orleans *vs.* The Merchants' Insurance Company was, to the best of my recollection, duly authenticated; but whether it showed the amount of damages recovered by said McCargo against the Company, I cannot say, as I never read it; I do not believe it was ever before the Commission; my recollection is, that this paper was brought to the Commission by Mr. Eyre, on the 11th of January, 1855, the day when he met me at the Commission room, by appointment, on which day he made the memorandum to which I have referred. I am unable to say whether the copy sent by H. D. Johnson to the Commission was authenticated; I only recollect that it was used by me before the Commission, and was not objected to by the counsel for the British government; and, upon the information it contained, the Commissioners acted, and the umpire made the award.

Answer to the sixth cross-interrogatory. Full and official copies of all the proceedings and documents filed with or before the Commission or the umpire are not now on file in the Department of State; but I am unable to specify what papers or documents are missing.

J. A. THOMAS.
N. CALLAN,
Com'r.

DISTRICT OF COLUMBIA,
Washington County. Com'r.

I, Nicholas Callan, duly appointed Commissioner by the order and commission of the Circuit Court for the County of Washington, in the District of Columbia, to me issued and hereto annexed, to take the testimony of witnesses in the case in the caption mentioned, do

hereby certify, that the foregoing deposition of John A. Thomas, the witness in said commission or interrogatories mentioned, was completed before me on this twenty-first day of February, A. D. 1857, at the time and place in the caption hereof mentioned; that the examination, responses and statements of said witness were made in answer to the interrogatories and cross-interrogatories annexed to said commission, which were severally propounded to said witness by me; and that the answers thereto were reduced to writing by me, and by the said witness sworn to and subscribed, in my presence, at the time and place aforesaid, and that said deponent is a resident of the County of Washington, in the District of Columbia.

In testimony whereof, I, Nicholas Callan, Commissioner aforesaid, do hereunto set my hand and seal, at my office in the City of Washington, and County of Washington, in the District of Columbia, this twenty-first day of February, A. D. 1857.

N. CALLAN,
Com'r.

EDW'D LOCKETT and others
vs.
MARCY & PEMBERTON.
} No. 1101. Equity.

Interrogatories to be propounded to John F. Addison, of the City of Alexandria and State of Virginia.

1. Were you employed by Henry D. Johnson in the winter and spring of 1854, to copy papers in the Creole cases and in the case of the Merchants' Insurance Company, to be sent to the Commission sitting in London for the settlement of outstanding claims between the United States and Great Britain? If so, state, as nearly as you can, how long you were exclusively occupied in such work.

2. Are you aware that Mr. Johnson employed counsel to assist him in the preparation of said cases? If so, state who was so employed, and how long said counsel was occupied with Mr. Johnson in the preparation of said cases.

3. State whether or not you were employed by Mr. Johnson to copy documents in the State Department, to be transmitted as evidence in said cases. State how long you were employed in such copying; and also state, as nearly as you can, how many pages of such documents were copied by you.

4. State what your compensation was for such services.

5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. H. LAWRENCE,
Sol. for Compl'ts.

Cross-Interrogatories to be propounded to J. F. Addison.

1. State precisely the date when you commenced to copy the papers in the Creole cases, referred to in the first and third interrogatories in chief, and when you concluded making said copies; and especially state what papers you copied, and where the originals from which you copied them were, and where they now are; and particularly state into whose hands and at what date you handed said copies made by you.

2. State how and in what manner you know that counsel was employed by said Johnson.

R. J. BRENT,
for Def't.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Nicholas Callan, Esquire, greeting:

Know ye that you are appointed Commissioner to examine evidences in a cause depending in the Circuit Court for the County of Washington, in the District of Columbia, between Edward Lockett, Henry D. Johnson, and James G. Berret, complainants, and John Pemberton, Liquidator of the Merchants' Insurance Company of the city of New Orleans, and the Hon. William L. Marcy, Secretary of State.

Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you, all such evidences as shall be named or produced to you, by either complainants or defendants, and that you examine them upon their corporal oaths, to be by you administered, on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and that you, in reply to the interrogatories and cross-interrogatories hereto annexed, notice to be given to the parties, or their attornies, of the execution of this commission, before you execute the same; and, having reduced the depositions of the witnesses, so taken by you, into writing, you send the same, with this commission, closed under your hand and seals, to the Judges of the said Circuit Court, with all convenient speed.

Witness the Honorable James Dunlop, Chief Judge of the said Court, the day of in the year of our Lord one thousand eight hundred and fifty-seven.

Issued the 20th day of February, 1857.

JOHN A. SMITH,
Clk.

Commissioner's Oath.

You shall, to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to and left with you by either of the said parties. So help you God.

N. CALLAN,
Com'r.

Sworn to and subscribed before me this 21st of February, 1857.

F. S. MYER,
J. P.

DISTRICT OF COLUMBIA,
Washington County, to wit:

Deposition of J. F. Addison, whose testimony is alleged to be necessary to the complainants hereinafter named, taken and subscribed before me, Nicholas Callan, a Commissioner duly appointed for the purpose, in pursuance of a commission and upon the interrogatories and cross-interrogatories hereunto annexed, issued out of the Circuit Court for the County of Washington, in the District of Columbia, on the equity side thereof, to be read as evidence in a certain cause depending in said court wherein Edward Lockett, James G. Berret, and Henry D. Johnson are complainants, and the Hon. William L. Marcy, and John Pemberton, Liquidator of the Merchants' Insurance Company, are defendants.

J. F. Addison, a witness known to me to be of lawful age, being to me produced at the County of Washington and District of Columbia, on the twenty-first day of February, A. D. 1857, and being by me first duly sworn and cautioned to speak the whole truth, and there and then upon his oath aforesaid depose and answer each and all the annexed interrogatories which were separately put and read to him by me as follows, to wit:—

Answer to first interrogatory. I was employed in the winter of 1853 and spring of A. D. 1854 by H. D. Johnson to copy papers in State Department in the Creole cases and case of Merchants' Insurance Company, to be sent to the Commission sitting in London, and, as nearly as I can recollect, was so engaged about one month.

Answer second. I am aware that Mr. Johnson employed counsel to assist him in the preparation of said cases. The counsel was J. L. Hayes. I presume said counsel was occupied with Mr. Johnson several weeks.

Answer to the third interrogatory. I was employed by Mr. Johnson to copy documents in the State Department, to be transmitted as evidence in said cases. I was, as nearly as I can remember, more

than two weeks engaged in said State Department, and Mr. Johnson's office about two weeks more, copying in same case. I should say that I copied about 600 pages.

Answer to fourth interrogatories. I think the compensation for said services were about one hundred dollars.

Answer to fifth interrogatory. I do not know anything further which may be of benefit to the parties at issues in this case.

J. F. ADDISON.

N. CALLAN,
Com'r.

Answer to the first cross-interrogatory. I cannot state the time I commenced copying the papers in the Creole cases, nor can I state when I finished, exactly. The papers I copied were mostly letters from different Secretaries of State, and original from which I made these copies were in State Department. The copies I made were handed to H. D. Johnson.

Answer to second cross-interrogatory. I have heard Mr. J. L. Hayes and Mr. Johnson conversing about these cases. I have also been told that Mr. Hayes was counsel by Mr. Johnson, and, I think, by Mr. Hayes, at the time I was engaged making these copies.

J. F. ADDISON.

N. CALLAN,
Com'r.

DISTRICT OF COLUMBIA,
Washington County, to wit:

I, Nicholas Callan, duly appointed commissioner by the order and commission of the Circuit Court for the County of Washington, in the District of Columbia, to me issued, and hereto annexed, to take the testimony of witnesses in the case in the caption mentioned, do hereby certify that the foregoing deposition of J. F. Addison, the witness in said commission or interrogatories mentioned, was taken before me on this twenty-first day of February, A. D. 1857, at the time and place in the caption hereof mentioned; that the examinations, responses, and statements of said witness were made in answer to the interrogatories and cross-interrogatories annexed to said commission, which were severally propounded to said witness by me; and that the answers thereto were reduced to writing by me, and by said witness sworn to and subscribed, in my presence, at the time and place aforesaid, and that said deponent is a resident of the City of Alexandria, in the State of Virginia.

In testimony whereof, I, Nicholas Callan, commissioner aforesaid, do hereunto set my hand and seal, at my office, in the City of Washington and County of Washington, in the District of Columbia, this twenty-first day of February, A. D. 1857.

N. CALLAN,
Com'r.

EDW'D LOCKETT and others
vs.
MARCY & PEMBERTON. } 1101. Equity.

Interrogatories to be proposed to William Thompson, of the City of Washington, D. C.

1. State whether or not you were in London at the time of the sitting of the commission for the settlement of outstanding claims between the United States and Great Britain, and whether or not you were employed by Mr. Henry D. Johnson to look after the Creole cases, including that of the Merchants' Insurance Company, before said commission.

2. State whether you performed such services, and what compensation Mr. Johnson has made you therefor.

3. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. H. LAWRENCE,
Sol. for Compl'ts.

Cross-interrogatories to be propounded to William Thompson.

1. State the dates when you went to London, when you were employed by Henry D. Johnson to look after the Creole cases, and particularly state how and in what manner you looked after the same; what acts were done by you, especially in reference to the case of the Merchants' Insurance Company.

2. Was Mr. Johnson at London engaged in arguing or prosecuting this claim?

R. J. BRENT,
for Def't.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Deposition of William Thompson, whose testimony is alleged to be necessary to the complainants hereinafter named, taken and subscribed before me, Nicholas Callan, a commissioner, duly appointed for that purpose, in pursuance of a commission, and upon the interrogatories and cross-interrogatories hereunto annexed, issued out of the Circuit Court for the County of Washington, in the District of Columbia, on the equity side thereof, to be read as evidence in a certain cause depending in said Court, wherein Edward Lockett, James G. Berrett, and Henry D. Johnson are complainants, and the Hon. William L. Marcy, and John Pemberton, liquidator of the Merchants' Insurance Company, are defendants.

William Thompson, a witness known to me to be of lawful age, being to me produced at the County of Washington and District of Columbia, on the twenty-third day of February, A. D. 1857, and being by me first duly sworn, and cautioned to speak the whole truth, and there and then, upon his oath aforesaid, depose and answer each and all the annexed interrogatories, which were separately put and read to him by me as follows, to wit:

Answer to first interrogatory. I was in London in the spring of 1854, when I received a communication from Mr. H. D. Johnson, informing me of his interest in an important case known as the Creole, of which the Merchants' Insurance Company was one of the claimant before the commission for the settlement of claims between the United States and Great Britain.

Answer to second interrogatory. I accepted the proposition of Mr. Johnson, and during my stay in London, which was until the expiration of the commission, was in constant intercourse with the commissioners of the United States, Mr. Upham, and also with General Thomas, upon the subject of this case. The compensation I have received from Mr. Johnson, on account of said services, amounts to $430.

Answer to third interrogatory. While the pending of the case before the commission, I recollect being in the ante-room one day, when a person called and represented himself as being applied to or engaged by some parties interested in a claim before said commission. His inquiry was addressed to Mr. N. L. Upham, Secretary of the American Commission, who informed said person that the claim related to compensation for "niggers," taken by order of agents of the British Government; the person inquiring significantly remarked: "and can they (the claimants) expect to make anything out of a claim for niggers!" This occurred some time towards the close of the season, but I am unable to fix upon any date. I can think of nothing further. WM. THOMPSON.

N. CALLAN,
Com'r.

Answer to first cross-interrogatory. I was in London and preparing to come home when I received Mr. Johnson's letter, proposing to employ me to look after his interest before the commissioners. I was in frequent communication with the commissioners, Judge Upham, and the secretary, Mr. N. L. Upham, and often talked with General Thomas upon the subject of these Creole claim, and kept Mr. Johnson advised, accordingly, up to the award of the umpire, in January, 1855.

Answer to 2d cross-interrogatory. Mr. Johnson was not in London engaged to prosecute these claims, but I considered myself his agent. WM. THOMPSON.

N. CALLAN,
Com'r.

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DISTRICT OF COLUMBIA,
County of Washington.

I, Nicholas Callan, duly appointed commissioner by the order and commission of the Circuit Court for the County of Washington, in the District of Columbia, to me issued and hereto annexed, to take the testimony of witnesses in the case in the caption mentioned, do hereby certify that the foregoing deposition of William Thompson, the witness in said commission or interrogatories mentioned, was taken before me on this twenty-third day of February, A. D. 1857, at the time and place in the caption hereof mentioned; that the examination, responses and statements of said witness were made in answer to the interrogatories and cross-interrogatories annexed to said commission, which were severally propounded to said witness by me, and that the answers thereto were reduced to writing by me, and by said witness sworn to and subscribed in my presence at the time and place aforesaid, and that said deponent is a resident of the city and county of Washington, District of Columbia. In testimony whereof, I, Nicholas Callan, commissioner aforesaid, do hereby set my hand and seal at my office in the city of Washington and county of Washington, in the District of Columbia, this twenty-third day of February, A. D. 1857 :—

N. CALLAN,
Com'r.

And said cause was continued regularly until the 28 May, 1857, when the following agreement of counsel and the several letters were filed :—

JOHNSON, &c.,
vs. } 1101.
PEMBERTON.

In Equity.

It is agreed that the letters herewith filed, dated Dec'r 15th, 1853, March 22, 1854, and 18 Jan'y, 1851, were written to the defendant Pemberton, and Levi Pierce his attorney, as they respectively purport to be, and that the two first thereof are signed in the proper handwriting of the two complainants, Johnson and Lockett, and the last of said letters is signed by the Hon. J. P. Benjamin, then a Senator of the U. States from Louisiana; it is further agreed that the eight letters attached together and herewith filed, dated 21 Oct., 1854, 12th Jan'y, 1855, 19th Jan'y, 1855, 20 Jan'y, 1855, 27 Jan'y, 1855, 16 March, 1855, and 23 March, 1855, were written at the dates thereof to the persons named therein, and subscribed by the persons signing the same, as they respectively purport to be, and that Brown, Shiply, & Co., and Nicholson, named in said letters, are commercial houses through whom Messrs. Trinder & Eyre, solicitors in London, were employed by the deft. Pemberton to attend as

counsel to the prosecution of the claim of the Merchants' Insurance Company before the commission in London touching the case of the Creole, and that the said Trinder and Eyre were paid by said Pemberton, as curator aforesaid, $1000, upon their claim for services rendered before said commission; but the complainants knew nothing of their being so employed or of their prosecuting said claim, but admit such employment for the purposes of this suit.

Agreed to. LOCKETT, BERRETT & JOHNSON,
By JOSEPH H. BRADLEY,
Sol'r.

R. J. BRENT,
for Pemberton, Liquidator.

Re Creole.

LONDON, 1 John St., Bedford Row, 21 *Oct.*, 1854.

Sir: We have to acquaint you that the argument on the re-hearing of this and other cases of a like character before Mr. Joshua Bates, of the firm of Baring Brothers & Co., was closed to-day. The commissioners disagreed, and Mr. Bates is the umpire. Gen'r'l Thomas' argument was both able and manifested great industry and research. We now may soon hope to have a decision. You did not favor us with a reply to our last letter.

We are, sir, your ob't serv't,
TRINDER & EYRE.

John Pemberton, Esq., New Orleans.

Re Creole.

LONDON, 1 John Street, Bedford Row, 12 *Jan'y*, 1855.

Sir; We have the pleasure to inform you that Mr. Bates has made an award in favor of compensation. The award is not *the award is not* complete, so as to give you the sum which will be payable to you by this mail, but you shall hear by the next.

Yours faithfully,
TRINDER & EYRE.

J. Pemberton, Esq.

Re Creole.

Copy.

LONDON, 1 John Street, Bedford Row, 19*th January*, 1855.

Dear Sir: Owing to the delay of the secretary of commission on claims we have not been able before to communicate to you the full particulars of Mr. Bates' award. We now inclose you an examined copy of the award, by which you will see that Mr. Pemberton, as liquidator of the Merchants' Insurance Company of New Orleans, is awarded two sums of

$12,460
16,000

$28,460

The claim of Mr. Pemberton was for $9,333 33/100 with 5 per cent. interest from the 10th March, 1842, paid under the policy effected with the Merchants' Insurance Company by Edward Lockett, and for $14,400 with 5 per cent. from 10th March, 1842, paid under the policy effected by McCargo. You will observe that the award does not, by the amounts given to Mr. Pemberton, cover these claims to their full extent, and the umpire does not state the principle on which his calculations are made; but, as far as we could gather from the American Commissioner, Mr. Upham, to the umpire, has ordered *pro rata* according to the number of slaves. It is to be regretted that General Thomas had to leave before the umpire finally awarded the sums, for we cannot but think that as against Lockett we should get the amount paid with interest from 10th March, 1842, and also if there could have been made a distinction in the sum of $23,140, awarded to Goodwin for self and McCargo, of a particular amount to McCargo, then that we should have got awarded out of such amount the difference between $16,000 and $14,400, + 5 per cent. from the 10th March, 1842.

We have endeavored to see the American Commissioner, but without success. We propose to write to him, and if we can effect any alteration in the award you shall hear. We propose to write to Mr. Pemberton, although we have never received from him any reply to our letters; for we think we should fail in doing justice did we not suggest that this Company, as well as the other parties interested in the Creole, would only be feebly acknowledging the valuable services of General Thomas by mere thanks. We consider that it is owing chiefly to his ability and industrious research that they now recover so large a sum; and we shall be glad to hear that they have presented to him with some substantial testimonial. We have a certified copy of the award, if Mr. Pemberton should require it at any time.

We are, dear sir,

Yours, faithfully,

(Signed) TRINDER & EYRE.

Messrs. Brown, Shipley & Co.

Re Creole.

LONDON, 1 JOHN STREET, BEDFORD ROW, 19 *Jan'y*, 1855.

Sir: We have now before us the award of Mr. Bates, in which he has given to you two sums of $12,460 and $16,000, together $28,460.

We did not know what the sums were until this week, and until General J. A. Thomas had left for the United States, which he did on Saturday last; and we regret to find that the award does not give you the full claim we made in your behalf. We think, however, that as respects the sums also awarded by Mr. Bates to Lockett and Mr. McCargo, who insured with your company, they, in equity, should have been made to contribute to your complete re-imbursement, viz: the principal sums of $9333 33/100 and $14,400, with interest at 5 per

cent. thereon respectively, from the 10th March, 1842. We have submitted a statement of these views to Mr. Commissioner Upham, with the hope of getting an amendment of the award in your favor.

We will communicate by the next mail the result of this; meanwhile we are much pleased to have been so successful in your behalf. But we should fail in doing justice, and, we think, without overstepping our position, did we not add that you and the other claimants are chiefly indebted to Gen'l J. A. Thomas for the fortunate issue, and that we trust you will combine in presenting him with a handsome and substantial testimonial for the great ability and industrious research manifested by him upon a very difficult question of dispute, as from his public character here he could not act as your feed counsel.

We are, sir,

Your obed't serv'ts,

TINDER & EYRE.

John Pemberton, Esq., New Orleans.

P. S. As we have not yet had the advantage of a direct communication from, we have also written to Messrs. Brown, Shipley & Co., who gave us our instructions, together with a copy of the award; we have also a certified copy for your use, should you hereafter require it.

T. & E.

LIVERPOOL, 20*th Jan'y*, 1855.

SAM. NICHOLSON, ESQ., New Orleans.

Dear Sir: We enclose copy of a letter received this morning from Messrs. Tinder & Eyre, of London, the Solicitors in whose hands we placed the document from Mr. Pemberton, of the Merchants' Insurance Co., rece'd in your favor of 20 Febr'y last.

You will see that the umpire to whom the matter was referred has awarded to Mr. Pemberton the sum of $12,460

and 16,000

altogether, R $28,460

and we enclose copy of the award, which gives full particulars.

We have not yet received the bill of charges, but presume we shall do so shortly.

LIVERPOOL, 29 *Jan'y*, 1855.

(Atlantic.)

MESSRS. SAM'L N. NICHOLSON & Co., New Orleans.

Dear Sir: We enclose press copy of a letter which we addressed to you by last steamer, in reference to the award made in the case of the Creole, and showing that the amount awarded to the Merchants' Insurance Company of New Orleans was $28,460; and we also hand annexed copy of a further letter on the same subject from

1697

Messrs. Tender & Eyer, frem which you will see that the English government will remit the money to Washington, for distribution by the American government. We have not yet received the bill of costs, but will send it out as soon as received.

We remain yours resp'f.,
BROWN & SHIPLEY & CO.

Re Creole.

LONDON, 1 JOHN STREET, BEDFORD ROW, 16*th March*, 1855.

Dear Sir: We regret that we are unable to give you, by this mail, the information you seek for as to the time when the sum awarded to you will be paid. We went to the Foreign Office on the subject, and were requested to write a letter to Lord Clarendon. This we have done; and took the opportunity to mention your preference that the *that the* money should be receivable here. We have not yet had his Lordship's reply. We were unable to induce Mr. Bates to alter a second time his award in your favor. He said it was difficult to meet the further claim we put in, as it interfered with the principle on which he made his calculations and award, and gave us to understand we might be well content with what we got. Messrs. Brown, Shipley & Co. have required that we should send them our charge, with items, according to the usual mode of solicitors' bills in England; but, on seeing Mr. Collet, of that firm, here this week, we took objection to doing so, and pointed out to him your letter of the 16th February, 1854, to Messrs. Nicholson, of which Messrs. Brown, Shipley & Co., in instructing us, put a copy, in which you say "the expenses in the matter we limit to $5000, which amount will be increased to $1000 in the event of the Company receiving the amount of the claim," and claimed to have this *quasi* per centage remuneration for our services. Mr. Collet thereupon advised our writing to you upon this subject, with reference to your giving his firm more full instructions. As this mode of payment is, we believe, customary with professional men in the United States, and as this business was transacted in an international court, as much American as English, although sitting for convenience in London, we think ourselves entitled to the payment for our services as specified in your letter above referred to. Hoping to hear that you will instruct Messrs. Brown, Shipley & Co., that they will pay us accordingly,

We are, dear sir,
Yours truly,
TRINDER & EYRE.

Jno. Pemberton, Esq., Liquidator Merchants' Insurance Co'p'y, New Orleans.

Re Creole.

LONDON, 1 JOHN STREET, BEDFORD ROW, 23 *March*, 1855.

Dear Sir: We regret that we have only been able to obtain a reply from Lord Clarendon as on the other side. If we can in any way further promote your wishes we shall be happy to do so, and are, dear sir,

Yours, faithfully,
TRINDER & EYRE.

John Pemberton, Esq., Merchants' Insurance Co., New Orleans.

Copy.

FOREIGN OFFICE, *March* 19, 1855.

Gentlemen: I am directed by the Earl of Clarendon to acknowledge the receipt of your letter of the 15th inst., requesting information as to the payment of the sum awarded to Mr. John Pemberton by the umpire of the mixed commission of British and American claims, and I am to state to you with reference to your request to be informed in what mode the sums awarded to Americans will be paid. That by the 4th article of the Convention between Her Majesty and the United States of the 8th of February, 1853, it is stipulated that "all sums of money which may be awarded by the commissioners or by the arbitrator or umpire, on account of any claim, shall be paid by one government to the other, as the case may be, within twelve months after the date of the decision. Such sums to be subject to a rateable deduction to defray the expense of commission, the amount of which deductions has yet to be ascertained. Under these circumstances Lord Clarendon is unable, at the present moment, to inform you when the sums awarded to the British and American claimants will be paid, but due notice will be given so soon as the necessary arrangements shall have been made between the two governments.

I am, gentlemen,
your most obedient, humble servant,
WODEHOUSE.

Messrs. Trinder & Eyre.

WASHINGTON, *March* 28.

To the Commissioners appointed for the settlement of outstanding claims between the United States and Great Britain, London.

As the Attorney of Wm. H. Goodwin, assignee of Thomas McCargo, claiming indemnity for the value of slaves liberated from the Brig "Creole," I enclose the following described papers, and request that they may be filed with the memorial of said Goodwin, now before your honorable board, viz:—

Certified copy of bill of lading.
do. do. of transfer of McCargo to Goodwin.
do. do. of policy of insurance.
do. do. of judgments.

I have the honor to be,
with great respect,
your ob't servant,
H. D. JOHNSON,
Attorney of Wm. H. Goodwin.

"Creole."

H. D. Johnson, attorney for Goodwin, transmitting certain papers in the case.

Re "Creole."

1 JOHN STREET, BEDFORD ROW, 23 *May*, 1854.

Sir: We have delayed hitherto handing to you a more detailed account of the claim we are instructed to make on the part of the Merchants' Insurance Company of New Orleans, as we have been expecting to hear from Mr. Pemberton with the exact amounts paid by the company, and for which the claim should be made.

However, as these items are not yet arrived, we think it desirable to delay no longer in putting you into possession of the particulars out of which the claim arises, calling your attention to the reason of the blanks in the 7th, 9th and 10th paragraphs of the accompanying memorial.

Of course as soon as we can remedy these defects we will do so. Meanwhile we conceive that the memorial affords a sufficiency of material for the commissioners to adjudicate as to the merits of the claim.

We have the honor to be,
Sir,
Your faithful serv'ts,
TRINDER & EYRE.

Gen'l Thomas, agent for American claims before mixed commissioners.

BRIG "CREOLE,"
Presented March 14.
P. ROTCHFORD,
JAMES PEMBERTON,
Presented June 10.

Convention of 8 *February*, 1853.

"Re Creole."

Claim by Messrs. Trinder and Eyre, No. 1 John Street, Bradford Row, solicitors on behalf of John Pemberton, of New Orleans, liqui-

dator of the old "Merchants' Insurance Company," and "President of the Merchants' Insurance Company of New Orleans."

17 Nov., 1841.

By policy of this date the sd. company, called the "Old Merchants' Insurance Company," insured on account of Edward Locket 15 (fifteen) slaves for 10,000 dollars, per Creole.

The company, on the 24 March, 1845, after a long litigation paid Edward Locket $9333\frac{33}{100}$ dollars with £5 p. ct. interest, and also the sum of $\$75\frac{87}{100}$ dollars for costs.

17th April, 1854.

By a memorial by H. D. Johnson, of this date and lodged on 14th June, 1854, it appears that $\$9333\frac{33}{100}$ was paid to Locket instead of $10,000, because *deduction* of 666 dollars $\frac{66}{100}$ was made for the value of *one slave* which had returned to New Orleans, and 14,400 dollars was paid to Thomas McCargo instead of 15,000 dollars, because deduction of $800 was made for the value of one slave which had returned to New Orleans.

Mr. Pemberton, as liquidator as aforesaid, claims to receive the sums paid by the company, under the said policies, or such sum as shall be given as compensation for thirty-two slaves (32).

If the award gives only compensation for slaves as so much per head, Mr. Pemberton claims out of the sum awarded to Locket compensation for fourteen (14) slaves, and out of the sum awarded to Mr. McCargo compensation for eighteen (18) slaves.

11th January, 1855.

American and English Convention.

Mem'dum of claim of Mr. John Pemberton, liquidator of the old Merchants' Insurance Company of New Orleans.

TRINDER & EYRE,
1 John Street, Bedford Row.

WASHINGTON, *April* 17, 1854.

To the Honorable Commissioners appointed for the settlement of outstanding claims between the United States and Great Britain, London.

I have the honor to transmit herewith, the following described papers, which, as the attorney of G. W. Apperson, I desire to have filed with his memorial, forwarded by me on the 10th of February last, through the Department of State, viz:—

Original policy of insurance on 21 slaves per the Brig *Creole*, on account of Sherman Johnson.

Certified copies of schedule of said slaves, and of application for insurance thereon.

Certificate of judgment of the 4th District Court of New Oaleans in the case of Sherman Johnson *vs.* The Ocean Insurance Company.

1699

Certificate of judgment of the Supreme Court of Louisiana in the same case.

I am, very respectfully,
your obedient servant,
H. D. JOHNSON.

UNITED STATES OF AMERICA,
Department of State.

To all to whom these presents shall come, greeting.

I certify, that the papers hereunto annexed are true copies of the originals on file in this department. In testimony whereof, I, Lewis Cass, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the City of Washington this 23d of May, A. D. 1857, and of the Independence of the United States of America the 81st.

[SEAL] LW. CASS.

Memorial of Jno. Pemberton.

To the commissioners appointed under and by virtue of a convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, for the settlement of outstanding claims by a mixed commission signed at London, February the eighth, one thousand eight hundred and fifty-three:

The respectful memorial of John Pemberton, Esquire, President of the Merchants' Insurance Company of New Orleans, showeth:—

1. That Thomas McCargo, residing in Halifax County, in the State of Virginia, did at New Orleans, on or about the seventeenth of November, one thousand eight hundred and forty-one, make insurance and cause whom it might concern to be insured in the sum of fifteen thousand and two hundred dollars, lost or not lost, by the said Merchants' Insurance Company, (a corporation duly chartered by the State of Louisiana, and located at New Orleans,) at and from Norfolk, in the State of Virginia, to New Orleans, upon nineteen slaves, named as per application, filed in the office of the said company, valued at eight hundred dollars each, making the total value of fifteen thousand and two hundred dollars, laden on board the brig called the "Creole," beginning the adventure upon the said slaves from and immediately following the loading thereof on board the said vessel at Norfolk aforesaid, and continuing until the said slaves should be safely landed at New Orleans.

2. That Edward Lockett, residing in Richmond, in the State of Virginia, on or about the eighteenth of November, one thousand eight hundred and forty-one, did make an insurance for the sum of ten thousand dollars in the same insurance company, at and from Richmond, in the said State of Virginia, to New Orleans, upon fifteen slaves, named as per application, filed in the office of the said com-

pany, valued equally each, and in all ten thousand dollars, also laden on board the said brig "Creole," beginning the adventure upon the said slaves from and immediately following the loading thereof on board of the said vessel at Richmond aforesaid, and continuing until the said slaves were safely landed at New Orleans.

3. That the said insurance company, in consideration of the premiums of insurance then and there severally paid by the said Thomas McCargo and Edward Lockett, by the said policies respectively bound itself to assure the said Thomas McCargo and Edward Lockett respectively, on account as aforesaid, and took upon itself, in the said voyage, all the adventures and perils of pirates, takings at sea, arrests, restraints, and detentions of all kings, princes, or people, of what nation, condition, or quality soever, the risk of detentions, capture, seizing of foreign powers, and all other perils, losses, and misfortunes that then had or should come to the hurt, detriment, or damage of the said slaves, or any part thereof, which assurers were liable for.

4. That on or about the twenty-fifth October, one thousand eight hundred and forty-one, the said vessel with the said fifteen slaves of the said Thomas McCargo on board, started on her voyage from Richmond, and on or about the thirtieth October, one thousand eight hundred and forty-one, from Norfolk with the said nineteen slaves of the said Edward Lockett on board, and that the said vessel was then staunch and strong, well manned and provided for the said voyage; that the said vessel, in the prosecution of said voyage, proceeded to about one hundred and thirty miles to north-northeast of The Hole in the Wall, whence, by reason of an affray and disobedience of about nineteen slaves on board, all of whom were other than those insured as aforesaid, the said vessel proceeded to Port Nassau, in the Island of New Providence, within the dominions of Her Majesty of the Queen of Great Britain and Ireland, where, between the tenth and eighteenth November, one thousand eight hundred and forty-one, both inclusive, the public authorities and agents of Her said Majesty captured, seized, detained, and emancipated the said slaves so covered by the said respective policies, whereby the said thirty-four slaves were all totally lost by the risks insured against in the said policies.

5. That the said Thomas McCargo and Edward Lockett did, upon said loss, respectively, duly inform the said insurance company thereof, and made the preliminary proofs, as required by the said policies respectively, and also respectively made to the said company a full and entire abandonment of all the said slaves, and respectively demanded payment of the amount of their respective policies, for the total loss of the said slaves, and upon the said insurance company refusing to pay the respective amounts of the said policies to the said Thomas McCargo and Edward Lockett, they respectively did, on the fifteenth day of December, one thousand eight hundred and forty-one, file their respective petitions to

the Honorable the Commercial Court of New Orleans, setting forth as hereinbefore is set forth, and praying "the *the* Merchants' Insurance Company of New Orleans be cited, and after due proceedings be condemned to pay to them respectively, the amount of their several and respective policies, with interest thereon at the rate of five per cent. per annum from judicial demand, until payment, with costs of suit.

6. That the proceedings so respectively instituted by said Thomas McCargo and Edward Lockett, went on to trial, and that the action Thomas McCargo against the said Merchants' Insurance Company, was tried on or about the fifth day of January, one thousand eight hundred and forty-three, when the jury returned the following verdict, *videlicet:* "We find for plaintiff the sum of $14,000, with judicial interest from the 10th March, 1842," and that the said Court did thereupon order that Thomas McCargo should recover from the said Merchants' Insurance Company, fourteen thousand four hundred dollars, with five per cent. interest thereon from tenth March, one thousand eight hundred and forty-two till paid, and costs of suit.

7. That a motion was made for a new trial in the said last mentioned action, on the grounds that the verdict and judgment was contrary to law and evidence, and a rule granted, but the Court, on the thirteenth of January, one thousand eight hundred and forty-three, after hearing counsel, overruled the said motion for a new trial, and on the eighteenth day of January, one thousand eight hundred and forty-three, your memorialist filed a petition of appeal from the verdict and judgment so given as aforesaid, to the Supreme Court of the State of Louisiana; but the said Supreme Court, on the twenty-fourth day of March, one thousand eight hundred and forty-five, affirmed the judgment of the said Commercial Court of New Orleans, directed a writ of *fieri facias* to the sheriff of the said Court, commanding him to levy from your memorialists the sum of fourteen thousand four hundred dollars, with five per cent. interest thereon, from the tenth day of March, one thousand eight hundred and forty-two, till paid, and also the sum of 100\frac{25}{100}$ for costs; and accordingly your memorialist paid the same on the twenty-fourth day of March, one thousand eight hundred and forty-five, to the sheriff, amounting in the whole to the sum of

8. That the action of Edward Lockett *versus* The Merchants' Insurance Company of New Orleans, was tried on the seventeenth day of January, one thousand eight hundred and forty-three, in the said Commercial Court of New Orleans, when the jury returned the following verdict: "We, the jury, find a verdict for the plaintiffs "for the sum of 9333$\frac{33}{100}$, say nine thousand three hundred and "thirty-three $\frac{33}{100}$ dollars, with judicial interest from the 10th March, "1842, until paid." And thereupon the said Court adjudged that the plaintiff should recover from the said company nine thousand three hundred and thirty-three $\frac{33}{100}$ dollars, with five per cent. inte-

rest thereon from tenth March, one thousand eight hundred and forty-two, until paid, and costs of suit.

9. That on the twenty-fifth day of January, one thousand eight hundred and forty-three, your memorialist moved the said Court for a new trial in the said last mentioned case, but the said motion was on the thirty-first January, one thousand eight hundred and forty-three, overruled by the said Court, and on the fourth day of February, one thousand eight hundred and forty-three, your memorialist filed his petition of appeal from the verdict and judgment so given as aforesaid, to the Supreme Court of the State of Louisiana; but the said Supreme Court, on the twenty-fourth day of March, one thousand eight hundred and forty-five, affirmed the judgment of the said Commercial Court with costs, and thereupon the said Commercial Court of New Orleans directed a writ of *fieri facias* to the sheriff of the said Court, commanding him to levy from your memorialist the sum of nine thousand three hundred and thirty-three $\frac{33}{100}$ dollars, with five per cent. interest thereon from the tenth day of March, one thousand eight hundred and forty-two till paid, and also the sum of seventy-five $\frac{87}{100}$ dollars for costs; and accordingly your memorialist paid the sum on the twenty-fourth day of March, one thousand eight hundred and forty-five, to the plaintiff's solicitor, amounting in the whole to the sum of

10. That the loss of the said slaves, in manner as aforesaid, constitutes a proper *a proper* claim for interposition by the Government of the United States, on behalf of the Merchants' Insurance Company of New Orleans, with the Government of Her Britannic Majesty, and your memorialist respectfully prays that you will examine this claim, and decide that the said Merchants' Insurance Company is entitled to be paid the said sums of and so respectively paid by them in the said actions as aforesaid, and amounting together to by the said Government of Her Britannic Majesty, with interest thereon from the twenty-fourth March, one thousand eight hundred and forty-five, or that you will make such other decision for the relief of the Merchants' Insurance Company as to you may seem proper.

Dated 1854. Creole, per Merchants' Insurance Company of New Orleans.

Memorial to the Commissioners appointed by a Convention between Her Majesty and the United States of America.

UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, greeting:

I certify that the papers hereunto annexed are true copies of the original on file in this department.

In testimony whereof, I, Lewis Cass, Secretary of State of the

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United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 23d day of May, A. D. 1857, and of the Independence of the United States of America the 81st.

[SEAL.] LEWIS CASS.

Record of the Proceedings of the Commercial Court, Louisiana.

STATE OF LOUISIANA,
Commercial Court of New Orleans.

THOMAS MCCARGO
vs.
THE MERCHANTS' INSURANCE CO. OF NEW ORLEANS. } No. 4408.

Petition filed December 15, 1841.

To the Honorable the Commercial Court of New Orleans:

The petition of Thomas McCargo, residing in Halifax County, in the State of Virginia, respectfully shows that the Merchants' Insurance Company of New Orleans, a corporation duly chartered by the State of Louisiana, and located at New Orleans, is justly indebted to petitioner in the full sum of fifteen thousand and two hundred dollars, with interest thereon at the rate of five per cent. per annum from judicial demand until final payment for this: That at New Orleans, on the 19th November, 1841, petitioner did make insurance and cause to be insured, lost or not lost, whom it might concern, by the said Merchants' Insurance Company, at and from Norfolk, in the State of Virginia, to New Orleans, upon nineteen slaves, named as per application, filed in the office of said Company, and as per list thereof hereto annexed, valued at eight hundred dollars each, making the total value of fifteen thousand and two hundred dollars, laden on board the brig called the Creole, beginning the adventure upon the said slaves from and immediately following the loading thereof on board of the said vessel at Norfolk aforesaid, and continuing until the said slaves should be safely landed at New Orleans. That the said Insurance Company, in consideration of the premium of insurance then and there paid to it by petitioner, bound itself to assure petitioner, on account as aforesaid, and took upon itself, in said voyage, all the adventures and perils of pirates, taking at sea, arrests, restraints, and detentions of all kings, princes, people of what nation, condition, or quality soever, the risk of detention, capture, seizing of foreign powers, and all other perils, losses, and misfortunes that then had or should come, to the hurt, detriment, or damage of the said slaves or any part thereof, which assurers are liable for, all of which more fully appears by the annexed policy of insurance, signed by P. M. S. Cucullu, President, and John Pemberton, Secretary of said Insurance Company, and thereto by said Insurance Company duly authorized and empowered. Petitioner further shows that, at the time of the signing and execution of said policy, he was the true

and lawful owner of said nineteen slaves, and he has up to the present time continued to be, and now is, the true and lawful owner thereof. That on or about the 30th October, 1841, the said vessel with the said nineteen slaves laden on board, started from Norfolk on her said voyage; that the said vessel was then staunch and strong, well manned and provided for the said voyage; that the said vessel, in the prosecution of said voyage, proceeded to about 130 miles to the northeast of the Hole in the Wall, whence, by reason of an affray and disobedience of about 19 slaves on board, all of which were other than those described in said list, the said vessel proceeded to the port of Nassau, in the Island of New Providence, within the dominions of a foreign power, to wit, Her Majesty the Queen of Great Britain and Ireland, where, between the 10th and 18th November, 1841, both inclusive, the public authority and other agents of the said foreign power, to wit, Her Majesty aforesaid, captured, seized, and detained the said nineteen slaves, covered by said policy and described in the annexed list, whereby the said last mentioned slaves all totally lost by the risks insured against in said policy, to wit, the detention, the capture and seizure of foreign powers and pirates, taking at sea, arrests, restraints, and detentions of all kings, princes, and people of what nation, condition, or quality soever, and all other perils, losses, and misfortunes above enumerated and described, whereby the Merchants' Insurance Company of New Orleans has become indebted to petitioner in the full sum of fifteen thousand and two hundred dollars in current bank-notes, which are equivalent to specie, which, though amicably demanded, the said Company refuses to pay. That petitioner has, since said loss, duly informed said Insurance Company thereof, and has made the preliminary proof as required by said policy, and has made to said Company a full and entire abandonment of said slaves, and has demanded payment of the amount of said policy, for the total loss of said slaves. Petitioner prays that the Merchants' Insurance Company of New Orleans be cited, and after due proceedings, be condemned to pay the petitioner the said sum of fifteen thousand and two hundred dollars, with interest thereon at the rate of five per cent. per annum from judicial demand, until payment, with costs of suit, and for general relief, and for a trial by jury.

PEYTON & SMITH.

(*Receipts written on the Petition.*)

Rec'd the policy annexed to the petition, 31st Dec., 1842.

PEYTON & SMITH.

Do., to carry to the Sup. Court, 25th March, 1844.

PEYTON & SMITH.

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Rec'd the bond signed by McCargo for the sum of $1771 39, according to an order of Court of this date.

N. O., *March 25th*, 1845. JNO. FINNEY,
for Coleman and Adkisson.

McCargo
vs.
N. O. Ins'ce Co.

Rece'd the chart and copy of log-book.

1 *April*, 1854. PEYTON & SMITH.

List of Slaves annexed to Petition.

A list of slaves insured by Thomas McCargo in the Merchants' Insurance Company Office, shipped on the Brig Creole.

No.	Names.	Col.	Age.	Height.		Sex.
27	Rachel Glover	Black	24	5	1¾	Female
28	Pinkey Robinson	Yellow	16	5	0½	"
29	Martha Thompson	Black	22	5	4½	"
30	Rebecca Evans	"	30	5	4½	"
31	Ann Wilson	"	15	5	3¼	"
32	Elea Palkey	"	20	5	6¾	"
33	Elizabeth Cullon	"	14	5	1	"
34	Mahala Janey	Brown	14	5	0	"
35	Ann Fields	Black	17	5	2	"
36	Milla Gains	"	15	4	10	"
37	Charlotte Jones	Yellow	10	4	4	"
38	Milla Jerrett	Black	26	5	1¼	"
39	Alsey Smith	"	13	4	10	"
40	Frankey Ferguson	"	40	5	1	"
41	Mary E. Scroggins	Brown	18	5	6	"
42	Richard Butler	"	23	6	1	Male.
43	Monroe Robinson	Black	24	5	7¼	"
44	Warren Smith	"	24	5	7	"
45	Harry Brown	"	21	5	7	"

Citation.

STATE OF LOUISIANA,
Commercial Court of New Orleans:

THOMAS McCARGO
vs.
THE MERCHANTS' INSURANCE COMPANY OF NEW ORLEANS.
No. 4408.

The Merchants' Insurance Company of New Orleans, located in New Orleans:

You are hereby summoned to comply with the demand contained

in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the Commercial Court of New Orleans, in the City of New Orleans, in ten days after the service hereof. Witness the Honorable Charles Watts, Judge of the said Court, the 15th day of December, in the year of our Lord 1841.

ED. GARDERE,
Clerk.

Sheriff's Return.

Rec'd 15th December, 1841, and on the same day served copy of petition and citation on Merchants' Insurance Co., by leaving the same at their office, corner of Royal and Bienville Streets, with Mr. Cucullu, the President, in person. Rt'd 16th Dec'r, 1841.

L. S. A. DUCRAS,
Sheriff Com'l Court.

Affidavit for Commission. *Filed Dec'r* 27, 1841, *and order.*

THOMAS MCCARGO
vs.
THE MERCHANTS' INSURANCE COMPANY.

Commercial Court.

Thomas McCargo, the said plaintiff, being sworn, deposes that the testimony of Robert Ensor, the master, Z. Giffon, the mate, and the others composing the crew of the brig Creole, and Theophilus McCargo and others, is material to said plaintiff. That, by said witnesses deponent expects to establish the truth of the allegation in his petition. That all of said witnesses are temporily in New Orleans, and will leave this State before the trial of this cause. That if they leave this State before their testimony is taken, it will be impossible to obtain their evidence for the trial of this cause. That a commission directed to any Associate Judge of the City Court of New Orleans is necessary in order to obtain the testimony of said witnesses, none of whom reside in this State.

THOS. McCARGO.

Sworn to and subscribed this 27th December, 1841, before me.

ED. GARDERE,
Clk.

It is ordered that a commission issue in this case according to law, directed to O. P. Jackson or any other Associate Judge of the City Court, New Orleans. 27th December, 1841.

ED. GARDERE,
Clerk.

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Answer. Filed December 31st, 1841.

THOMAS MCCARGO
vs.
THE MERCHANTS' INSURANCE COMPANY OF NEW ORLEANS.

Commercial Court of New Orleans.

And now the said defendants, by their counsel, come into Court, and for answer say: that, admitting only their signatures to the policy herein filed, and that they are a body corporate, they deny all and singular the allegations of the petition; they also deny that preliminary proof has been duly furnished, and deny that plaintiff has fulfilled the warranties which he was bound to fulfil, and they pray for judgment in their favor, or to be hence dismissed with their costs.

THOMAS SLIDELL,
for Def'ts.

CONRAD & BENJAMIN,
Associate Counsel.

Rule. Entered Dec'r 10, 1842.

THOMAS MCCARGO vs. N. O. INS. CO.	4409.	On motion of J. W. Smith, of counsel for plaintiffs:
SAME vs. MERCHANTS' INS. CO.	4408.	Ordered, that the defendants show cause on Thursday next, at 10 o'clock A. M., why all the *the* testimony heretofore taken on behalf of plaintiffs and now filed in the first of these cases,
E. LOCKETT vs. THE SAME.	4410.	should not be read on the trial of each and every one of these cases.
THE SAME vs. FIREMAN'S INS. CO.	4411.	

Sheriff's Return.

Received December 10th, 1842, and on the same day served copies of the within rule on Thomas Slidell in person, and on Lockett & Micon by delivering a copy thereof to Mr. Micon in person. Returned December 10th, 1842.

LS. A. DUCROSS.
Sheriff Com'l Court.

Order sustaining rule. Entered Dec'r 15th, 1852.

THOS. MCCARGO vs. MERCHANTS' INS. CO.	4408.	The rule taken herein by plaintiffs came on this day for hearing, J. W. Smith for plaintiffs. Defendants in rule failed to appear, though duly notified. After hearing counsel, the Court ordered that said rule be made absolute.
THE SAME vs. N. O. INSURANCE CO.	4409.	
E. LOCKETT vs. MERCHANTS' INS. CO.	4410.	

Order re-sustaining rule. Entered Dec'r 17th, 1842.

THOS. MCCARGO vs. N. O. INSURANCE CO.	4409.	On motion of J. P. Benjamin, of counsel for defendants, and with the consent of J. W. Smith, of counsel for plaintiffs, Ordered, that the rule herein taken on the 10th instant be opened for argument and re-hearing. Whereupon the rule was taken up.
SAME vs. MERCHANTS' INS. CO.	4408.	
E. LOCKETT vs. THE SAME.	4410.	

EUSTIS and J. W. SMITH,
for Plaintiffs.

J. P. BENJAMIN,
for Defendants.

After hearing pleadings, the Court ordered that said rule be made absolute.

Order and Continuance. Entered January 3d, 1843.

THOMAS MCCARGO vs. THE MERCHANT'S INSURANCE COMPANY OF NEW ORLEANS. } No. 4408.

This case came on this day for trial by a jury.

EUSTIS & SMITH,
for Plaintiff.

CONRAD & SLIDELL,
for Defendant.

When, the following persons having appeared in Court, were sworn on the jury, viz:—

1. Fred. Lantrel,
2. Jean Creon,
3. J. Lamathe.
4. A. C. Tremoulet,
5. P. Pajaud,
6. Francois Henry,
7. Patrick Summers,
8. M. Stenick.

There being no other jurors present, the Court ordered that attachments issue against the jurors not in attendance, and the trial continued until to-morrow, at 10 o'clock A. M.

Testimony. Filed January 4, 1843.

THOMAS MCCARGO
vs.
MERCHANTS' INSURANCE COMPANY OF NEW ORLEANS.

Testimony taken in open Court, January 4th, 1843. Plaintiff introduced evidence the policy of insurance, marked A; also the premium note, marked A *b*; the depositions of Z. C. Gifford, filed in the suit of McCargo *vs.* N. O. Insurance Company, and marked E; the bill of lading marked C, and filed in said case. When the plaintiff's counsel was about to commence the reading of his testimony, taken under commission, the counsel for defendant informed the Court that said depositions contained hearsay evidence, and evidence otherwise illegal, such as statements of the contents of notes, letters, &c., and not produced, and that such illegal evidence occurred so frequently, and was so intimately blended with the testimony to which such objections would not lie, that it would be impossible to separate them without very great delay on the trial of this cause, and, wishing to be considered as objecting to all such evidence on the grounds above stated, requested the Court to caution and instruct the jury beforehand that they must consider all such parts of said testimony as are hearsay or as refer to the contents of letters, notes, and other written documents not produced, as rejected by the Court, and not to be considered by them as evidence in the cause; and, the plaintiff not objecting to their course, the Court accordingly instructed the jury. Plaintiff introduced in evidence the deposition of R. Ensor, filed in said case, marked J No. 3; also that of L. Stevens, filed in same case and marked J No. one; also the deposition of W. H. Merritt, marked G, filed in same case; also that of Blum Curtis, marked J No. 4; also Francis Forewell, marked J No. 6; also that of J. J. D. McCargo, marked J No. 5; also that of Jacob Lesdner, marked M No. 2; also that of J. F. Bacon, marked J No. 2; also the document X, marked in said case; also the letter of John R. Hewell, dated Oct. 28, 1841, and annexed to depositions in said case. The abandonment marked A E introduced in evidence by plaintiff, and it is admitted to have been received within a day or two from its date. This document is offered merely to show that an abandonment was tendered to defendant by plaintiff. Alfred Bouligny, for plaintiff, sworn, says, that the value of current bank notes at this time is specie. Current bank notes are now equal to the face of them. Defendants reserve all legal exceptions to this testimony. Plaintiffs here stated that they had closed their evidence, with the exception of the proposal for insurance.

Premium Note marked Ab. Filed January 4th, 1843.

$361 $\frac{50}{100}$ NEW ORLEANS, *5th Dec'r*, 1840.

Four months after date we promise to pay to the order of Mr. John Goodin three hundred and sixty-one dollars and fifty cents, value received.

THOMAS McCARGO & CO.

M. I. Co., No. 2179.

(Endorsement) JNO. GOODIN,
Merchants' Ins. C'y,
By SAM'L S. RUFING.

Abandonment. Filed January 4, 1843.

STATE OF LOUISIANA,
City of New Orleans.

Be it known, that this day, before me, William Young Lewis, Notary Public, in and for the City of New Orleans, duly commissioned and sworn, personally appeared Thomas McCargo, at present in this city, who declared that he caused to be insured by the Merchants' Insurance Company, a corporate body of this city, the sum of fifteen thousand two hundred dollars, on nineteen slaves, shipped on board the brig Creole, Captain Ensor, bound on a voyage from Norfolk, in the State of Virginia, for the port of New Orleans, as appeared by policy No. 11,735, made and executed by said Company, and duly signed by the president and secretary thereof, on the seventeenth day of November, eighteen hundred and forty-one.

And whereas, it appears by a protest made before the undersigned Notary, dated the seventh day of December, eighteen hundred and forty-one, that said vessel was risen upon by a part of the slaves on board, and carried into Nassau, in the Island of New Providence, and that the slaves insured in the aforesaid policy have been liberated by the authorities of the British government in the Island of New Providence:

Now, therefore, he, the said Thomas McCargo, further declared that in consequence of the loss of the aforesaid slaves, he doth, by these presents, disengage himself, and his heirs and assigns, therefrom, as contained in said policy. Also from all further claim thereto, or appertaining to him as the owner thereof, be the same more or less; and doth abandon the same to the Merchants' Insurance Company, and all the right, claim and demand of him, the said Thomas McCargo, of, in, and to the same. And he doth hereby appoint, and in his place and stead depute and put the President of the said Merchants' Insurance Company and his successors in office, to be his true and lawful attorney, irrevocable, with power to demand and receive, in his name or otherwise, to the sole use and benefit of the said Merchants' Insurance Company, and of and from all and

every person and persons whomsoever the same doth or may concern, all sums of money, goods and effects whatsoever that shall or may be in his or their possession, proceeding from the slaves insured as aforesaid, and upon receipt in the premises to grant and give good and sufficient discharges, and generally to do and perform whatsoever shall be requisite, in as full manner as this appearer could do if personally present, with full power of substitution or revocation; and that he further declared that he does hereby hold the said Merchants' Insurance Company bound and responsible to him, his heirs and assigns, for the full amount assured by him on said slaves, to wit, the sum of fifteen thousand and two hundred dollars, with all interest and costs, and reserves to himself the right of prosecuting the said Company therefor, should they refuse to pay the same.

Done and passed at New Orleans, this eighth day of December, eighteen hundred and forty-one, in presence of William J. Lewis and L. L. Davier, both of this city, witnesses, who have hereunto signed their names with said party and me, the said Notary.

(Signed) THOS. McCARGO,
WILLIAM J. LEWIS,
L. L. DAVIER.
W. Y. LEWIS,
Not. Pub.

I hereby certify the foregoing a true copy of the original upon my current records.

In faith whereof, I hereunto set my hand and seal at New Orleans, this 9th day of December, 1841.

W. Y. LEWIS,
Not. Pub.

Order and Continuance. *Entered January* 4, 1843.

THOMAS McCARGO
vs.
MERCHANTS' INSURANCE COMPANY OF NEW ORLEANS. } No. 4408.

This cause came on this day for trial by a jury, as continued yesterday.

ROSELIUS & SMITH,
for Plaintiff.

SLIDELL & CONRAD,
for Defendant.

When the jury sworn yesterday, viz:

1. F. Lantrel,
2. Matthew Stewich,
3. P. Summers,
4. Jean Créon,
5. J. Lamothe,
6. A. C. Tremoulet,
7. P. Pagoud,
8. Francis Henry.

And, the following persons having appeared in Court, were sworn on the jury, viz:

1. C. Folin,
2. Alfred Bouligny,
3. L. Esperier,
4. R. H. Perdrauxville.

The panel being complete, and the Court having appointed C. Folin foreman of the jury, the trial proceeded; and, after hearing pleadings and evidence, the same was continued till to-morrow, at 10 o'clock A. M.

Testimony. Filed January 5th, 1843.

THOMAS McCARGO
vs.
MERCHANTS' INSURANCE COMPANY OF NEW ORLEANS.

Testimony on Trial, January 5th, 1843.

The defendants introduced in evidence the depositions marked J, filed in the suit of McCargo *vs.* New Orleans Insurance Company, No. 4409 of the docket of this Court; the proposal for insurance, marked Ac, introduced in evidence by plaintiff. Plaintiff introduced in evidence the deposition of L. A. Stevens, marked I, No. 7, and filed in said case, No. 4409; also that of Z. C. Gifford, marked M, No. one; also that of J. D. McCargo, marked I, No. 5.

Proposal for Ins'ce, marked Ac. Filed January 5, 1843.

Thomas McCargo. Insurance against, on 19 slaves, on board the brig Creole, Ensor, Master, bound from Norfolk to New Orleans, and valued at $800 each, and the Company not liable for suicide, desertion, or natural death.

2 ℔. New Orleans, November 17th, 1841.

(Accepted) THOS. McCARGO.

Rachael Glover,	Gains,
Pinkney Robertson,	Charlotte Jares,
Martha Thompson,	Milah Jerett,
Rebecca Evans,	Alsey Smith,
Ann Wilson,	Frankey Furgeuson,
Eliza Palmer,	Mary E. Strogus,
Elizabeth Collins,	Richard Butler,
Mahaley Yancey,	Monroe Robertson,
Ann Fields,	Warner Smith,

Harry Brown.

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Document marked Ad. Filed January 5th, 1842.

OFFICE OF MERCHANTS' INSURANCE COMPANY, NEW ORLEANS,
December 15th, 1841.

Mr. Thomas McCargo:

Sir: The Merchants' Insurance Company of New Orleans have instructed me to say in writing, as has already been verbally declared to you, at the time of notice, that they have refused and still refuse to accept the abandonment made by you of the slaves insured on board of the Brig Creole in the preceding week.

For the Merchants' Insurance Company.

JOHN PEMBERTON,
Sec'ty.

(Endorsement): Letter of non-acceptance from the Merchants' Insurance Co. of the slaves of the Brig Creole.

Order and Continuance. Entered Jan'y 5, 1843.

THOMAS MCCARGO
vs. } 4408.
MERCHANTS' INSURANCE CO. OF NEW ORLEANS.

This case came on this day for trial by a jury, as continued yesterday. Roslius, Payton and Smith for plaintiff; Conrad and Slidell for defendant.

When, all the jurors empanelled and sworn in this case being present, the trial proceeded, and, after hearing pleadings and evidence, the same was continued till to-morrow, at 10 o'clock A. M.

Order and Continuance. Entered Jan'y 6, 1843.

THOMAS MCCARGO
vs. } 4408.
MERCHANTS' INSURANCE CO. OF NEW ORLEANS.

This case came on this day for trial by a jury, as continued from yesterday. Payton, Smith and Eustis for plaintiff; Slidell and Conrad for defendant.

When, the jurors sworn and empanelled in this case being present, the trial proceeded; and, after hearing pleadings and evidence, the same was continued to-morrow, at eleven o'clock A. M.

Extracts from Minutes of the Court, of date January 7th, 1843.

THOMAS MCCARGO
vs. } 4408.
THE MERCHANTS' INSURANCE CO. OF NEW ORLEANS.

This case came on this day for trial by a jury, as continued from yesterday. Peyton and Smith, Eustis and Roselius for plaintiff; Slidell and Benjamin for defendants.

And, the following persons having appeared in Court, were sworn on the jury, viz:

1. C. Folin,
2. Alfred Bouligny,
3. L. Esperier,
4. R. H. Perdrauxville.

The panel being complete, and the Court having appointed C. Folin foreman of the jury, the trial proceeded; and, after hearing pleadings and evidence, the same was continued till to-morrow, at 10 o'clock A. M.

Testimony. Filed January 5th, 1843.

THOMAS McCARGO
vs.
MERCHANTS' INSURANCE COMPANY OF NEW ORLEANS.

Testimony on Trial, January 5th, 1843.

The defendants introduced in evidence the depositions marked J, filed in the suit of McCargo *vs.* New Orleans Insurance Company, No. 4409 of the docket of this Court; the proposal for insurance, marked Ac, introduced in evidence by plaintiff. Plaintiff introduced in evidence the deposition of L. A. Stevens, marked I, No. 7, and filed in said case, No. 4409; also that of Z. C. Gifford, marked M, No. one; also that of J. D. McCargo, marked I, No. 5.

Proposal for Ins'ce, marked Ac. Filed January 5, 1843.

Thomas McCargo. Insurance against, on 19 slaves, on board the brig Creole, Ensor, Master, bound from Norfolk to New Orleans, and valued at $800 each, and the Company not liable for suicide, desertion, or natural death.

2 ℘. New Orleans, November 17th, 1841.

(Accepted) THOS. McCARGO.

	Gains,
Rachael Glover,	Charlotte Jares,
Pinkney Robertson,	Milah Jerett,
Martha Thompson,	Alsey Smith,
Rebecca Evans,	Frankey Furgeuson,
Ann Wilson,	Mary E. Strogus,
Eliza Palmer,	Richard Butler,
Elizabeth Collins,	Monroe Robertson,
Mahaley Yancey,	Warner Smith,
Ann Fields,	

Harry Brown.

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Document marked Ad. Filed January 5th, 1842.

OFFICE OF MERCHANTS' INSURANCE COMPANY, NEW ORLEANS,
December 15th, 1841.

Mr. Thomas McCargo:

Sir: The Merchants' Insurance Company of New Orleans have instructed me to say in writing, as has already been verbally declared to you, at the time of notice, that they have refused and still refuse to accept the abandonment made by you of the slaves insured on board of the Brig Creole in the preceding week.

For the Merchants' Insurance Company.

JOHN PEMBERTON,
Sec'ty.

(Endorsement): Letter of non-acceptance from the Merchants' Insurance Co. of the slaves of the Brig Creole.

Order and Continuance. *Entered Jan'y* 5, 1843.

THOMAS MCCARGO
vs. } 4408.
MERCHANTS' INSURANCE CO. OF NEW ORLEANS.

This case came on this day for trial by a jury, as continued yesterday. Roslius, Payton and Smith for plaintiff; Conrad and Slidell for defendant.

When, all the jurors empanelled and sworn in this case being present, the trial proceeded, and, after hearing pleadings and evidence, the same was continued till to-morrow, at 10 o'clock A. M.

Order and Continuance. *Entered Jan'y* 6, 1843.

THOMAS MCCARGO
vs. } 4408.
MERCHANTS' INSURANCE CO. OF NEW ORLEANS.

This case came on this day for trial by a jury, as continued from yesterday. Payton, Smith and Eustis for plaintiff; Slidell and Conrad for defendant.

When, the jurors sworn and empanelled in this case being present, the trial proceeded; and, after hearing pleadings and evidence, the same was continued to-morrow, at eleven o'clock A. M.

Extracts from Minutes of the Court, of date January 7th, 1843.

THOMAS MCCARGO
vs. } 4408.
THE MERCHANTS' INSURANCE CO. OF NEW ORLEANS.

This case came on this day for trial by a jury, as continued from yesterday. Peyton and Smith, Eustis and Roselius for plaintiff; Slidell and Benjamin for defendants.

When, all the jurors empanelled and sworn in this case being present, the trial proceeded; and, after hearing pleadings and evidence, the jury returned the following verdict, viz:—

"We find for plaintiff the sum of $14,400, say fourteen thousand for hundred dollars, with judicial interest from the 10th March, 1842.

N. Orleans, 7 Jan'y, 1843.

C. FOLLIN,
Foreman."

The Court being satisfied with verdict of the jury, do, by reason thereof, order and adjudge that the plaintiff recover from the defendant, the Merchants' Insurance Company of New Orleans, fourteen thousand four hundred dollars, with five per cent. interest per annum thereon from 10th March, 1842, till paid, and costs of suit.

Verdict. Written on the Petition.

We find for plaintiff the sum of $14,400—fourteen thousand four hundred dollars—with judicial interest from the 10th March, 1842.

N. Orleans, 7th January, 1843.

C. FOLLIN,
Foreman.

Judgment. Written on the Petition.

The Court being satisfied with the verdict of the jury, do, by reason thereof, order and adjudge that the plaintiff recover from the defendant, the Merchants' Insurance Company of New Orleans, fourteen thousand four hundred dollars, with five per cent. interest per annum thereon from 10th March, 1842, till paid, and costs of suit.

Rendered 7 January, 1843.

Signed January 14, 1843.

C. WATTS,
Judge.

(*Sheriff's return of service of copy of said Judgment.*)

Rec'd 14th January, 1843, and on the 16th served copy of the within judgment on Merchants' Insurance Co., by leaving the same at their office, corner of Bienville and Royal Streets, with S. Cucullu, the president, in person.

Rec'd 17th Jan'y, 1843.

LS. H. DUCROS,
Sheriff Com. Ct.

Order. Entered January 7, 1843.

THOMAS MCCARGO
vs. } 4408.
MERCHANTS' INSURANCE CO. OF NEW ORLEANS.

The jury sworn in this case having found a verdict, were by the Clerk paid the fee allowed them by law.

Rule for new trial. Entered Jan'y 10, 1843.

THOMAS MCCARGO
vs.
MERCHANTS' INSURANCE CO. OF NEW ORLEANS.

On motion of T. Slidell, of counsel for defendant, ordered that plaintiff show cause, on Friday next, at 10 o'clock A. M., why a new trial should not be granted, on the grounds that the verdict and judgment thereon is clearly contrary to law and evidence.

(*Sheriff's Return.*)

Received January 10th, 1843, and same day served copy of the within rule on Peyton and Smith, through B. Peyton, a member of the firm.

Returned January 10th, 1843.

LS. A. DUCROS,
Sheriff Com. Court.

Order, new trial refused. Entered Jan'y, 13, 1843.

THOMAS MCCARGO
vs. 4408.
MERCHANTS' INSURANCE CO. OF NEW ORLEANS.

The rule herein taken for a new trial came on for hearing this day, J. W. Smith for plaintiff, T. Slidell for defendant; when, after hearing counsel, the Court overruled said motion.

Petition of Appeal. Filed Jan'y 18, 1843—*and Order.*

To the Honorable Charles Watts, the Judge of the Commercial Court of New Orleans.

The petition of the Merchants' Insurance Company of New Orleans, a body corporated by the Laws of Louisiana, which has its domicile in New Orleans, respectfully shows:

That they are advised that there is error to their prejudice in the verdict of the jury, and in the judgment of the Court thereon, in the case of Thomas McCargo *vs.* The Merchants' Insurance Company of New Orleans, rendered on the 7th day of January, 1843, No. 4408 of the docket of this honorable Court.

They therefore pray that they may be allowed a suspension appeal to the honorable the Supreme Court of Louisiana, on their giving bond, with Frank Perret and Pierre Poutz as sureties, conditioned according to law.

THOMAS SLIDELL,
of Counsel.

A suspension appeal is allowed in the case, according to law, returnable in the Supreme Court on the third Monday of February

next, on appellant's giving bond, with good and solvent security, in a sum exceeding by one-half the amount for which judgment is rendered against them, conditioned as the law requires.

New Orleans, 18 January, 1843.

C. WATTS,
Judge.

Appeal Bond. Annexed to Petition of Appeal.

Know all men by these presents, that we, the Merchants' Insurance Company of New Orleans, and Frank Perret and Pierre Poutz, sureties *in solido*, are held and firmly bound unto Thomas McCargo, his executors, administrators and assigns, in the sum of twenty-three thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the City of New Orleans, on this 18th day of January, in the year of our Lord one thousand eight hundred and forty-three.

Whereas the above bounden, the Merchants' Insurance Company, have this day filed a petition of appeal from a final judgment rendered against them in the suit of Thomas McCargo *vs.* The Merchants' Insurance Company, in the Commercial Court of New Orleans, on the seventh day of January, 1843:

Now the condition of the above obligation is such, that the above bounden, the Merchants' Insurance Company, shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in their appeal; otherwise that the said Frank Perret and Pierre Poutz, sureties, shall be liable in their place.

M. S. CUCULLU, [L. S.]
FRANK PERRET, [L. S.]
PIERRE POUTZ. [L. S.]

Signed, sealed, and delivered in presence of
JOHN PEMBERTON.

Rule. Entered February 9, 1843.

THOMAS MCCARGO
vs.
MERCHANTS' INSURANCE CO. } 4408.

On motion of J. W. Smith, of counsel for plaintiff, ordered that defendant show cause, on Wednesday next, at 10 o'clock A. M., why a suit of *fieri facias* should not be issued in this case, on the ground of the insufficiency of the security on the appeal bond herein; and why general relief should not be granted in the premises.

Sheriff's Return.

Rec'd 10th February, 1843, and same day served copy of the within rule on T. Slidell, by leaving the same at his office with Mr. Musson.

Ret'd 11th Feb'y, 1843.

L'S A. DUCROS,
Sheriff Com'l Court.

Order Rule Dismissed. Entered February 15, 1843.

THOMAS McCARGO
vs. } 4408.
MERCHANTS' INSURANCE COMPANY.

Witness Peret.

The rule herein taken came on for hearing this day. J. W. Smith for plaintiff, Slidell and Benjamin for defendant.

After hearing pleadings and evidence, the court overruled said motion.

Motion. Entered Feb'y 17, 1845.

THOMAS McCARGO
vs.
MERCHANTS' INSURANCE COMPANY.

On motion of J. Finney, of counsel for Coleman & Adkisson, and on filing an assignment of plaintiff herein of one thousand dollars in their favor, executed on the 15th February, 1845, and on proving the execution thereof, ordered, that said assignment be filed of record in this case, and defendant be notified of this order.

Sheriff's Return.

Received February 17th, 1845: on the same day served copy of the within order on the defendants thro' John Pemberton, their secretary.

Ret'd February 20th, 1845.

ARM'D GUYOL,
D'y Sheriff C. C.

Transfer from Plaintiff to Coleman and Adkisson. Filed March 19, 1845.

I hereby subrogate Coleman & Adkisson, the obligees of the within bond, to such part of my judgment against the Merchants' Ins. Co. of New Orleans as will pay and satisfy the within, viz: fifty-three 96 cents, and assign that sum out of said judgment and claim to the said Coleman and Adkisson.

March 19th, 1845. THOMAS McCARGO.

I saw the above assignment executed.

JNO. FINNEY.

$53 96. On or before the 1st day of March, 1843, I, Thomas McCargo, promise and oblige myself, my heirs, &c., to pay or cause to be paid unto Coleman & Adkisson, the just and full sum of fifty-three dollars and ninety-six cents of current money of Virginia, for value received. Witness my hand and seal this 26th day of Sept., 1842. [SEAL.] THOMAS McCARGO.

Motion. Entered March 19, 1845.

THOMAS McCARGO
vs.
MERCHANTS' INSURANCE COMPANY. } 4408.

On motion of J. Finney, of counsel for Coleman & Adkisson, and upon filing assignment in their favor for fifty-three $\frac{96}{100}$ dollars, ordered that said assignment be entered of record, and defendants notified thereof.

Sheriff's Return.

Received March 20th, 1845, and on the same day served copy of the within rule on the Merchants' Insurance Company thro' Jno. Pemberton, their Secretary.

Ret'd March 27th, 1845.

ARM'D GUYOL,
D'y Sheriff C. C.

Decree of Supreme Court. Filed March 24, 1854.

Supreme Court of the State of Louisiana, Monday, February 10th, 1845. Present their honors F. H. Martin, H. T. A. Bullard, A. Murphy, E. Simon, and Rice Garland.

THOMAS McCARGO, App'ee,
vs.
THE MERCHANTS' INSURANCE COMPANY OF NEW ORLEANS, App'ts.

Appeal from the Commercial Court of New Orleans.

It is ordered, adjudged and decreed that the judgment of the Commercial Court be affirmed, with costs.

A true extract from the minutes.

Clerk's Office, New Orleans, March 24, 1845.

EUGENE LASERE,
D'y Cl'k.

Extract from the Minutes of the Court. Dated March 24, 1845.

THOMAS McCARGO
vs.
MERCHANTS' INSURANCE CO. OF NEW ORLEANS. } 4408.

An appeal having been taken in this case to the Supreme Court,

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the decree rendered by said Court was this day filed, and, on motion of J. W. Smith, of counsel for plaintiff, order to be recorded, and is as follows, viz: "It is ordered, adjudged, and decreed, that the judgment of the Commercial Court be affirmed, with costs."

Writ of Fieri Facias.

STATE OF LOUISIANA,
Commercial Court of New Orleans.

The State of Louisiana to the Sheriff of the Commercial Court of New Orleans, greeting:

We command you, in the name of the State of Louisiana, and of the Commercial Court of New Orleans, that you demand from the defendants, the Merchants' Insurance Company of New Orleans, the sum of fourteen thousand four hundred dollars, with five per cent. interest thereon from 10th March, 1842, till paid: and also the sum of one hundred $\frac{25}{100}$ dollars, costs, which the plaintiff, Thomas McCargo, lately recovered by judgment of the Commercial Court; and if they shall not pay the same, after legal demand, that then you cause the same to be made out of the personal estate of the said defendants, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said defendants, exclusive of slaves, cannot be found in your district, that then you cause the said sum to be made of the real estate and slaves of said defendants in your district, whereof they were owners on the 14th day of January, 1843, last past, in whose hand soever the same may have come: and that you have those moneys before our said Court, to render the said plaintiff for the judgment aforesaid, on the 1st Monday of May next, together with this writ.

Witness the Honorable Charles Watts, Judge of said Court, the 24th day of March, in the year of our Lord one thousand eight hundred and forty-five, and in the 69th year of the Independence of the United States.

R. GARDERE,
D'y Clerk.

THOMAS MCCARGO
vs.
THE MERCHANTS' INSURANCE COMPANY OF NEW ORLEANS.

Judgment,	$14,400	
Interest,		
Costs, exclusive of sheriff's costs,	75	25
Tax,	25	—
Costs in S. Court,	30	—

(*Sheriff's Return.*)

Rec'd March 24th, 1843. Satisfied, money paid according to the order of Court. Returned April 2d, 1845.

ARM'D GUYOL,
D'y Sheriff C. C.

(*Endorsement written on above Writ.*)

The plaintiff has subrogated Coleman and Adkisson to such part of his judgment against the Merchants' Ins'ce Co. of New Orleans as will pay and satisfy them the sum of $1053 $\frac{99}{100}$.

(*Order of Court annexed to said Writ.*)

COMMERCIAL COURT OF NEW ORLEANS.

THOMAS MCCARGO
vs.
MERCHANTS' INSURANCE COMPANY OF NEW ORLEANS. } No. 4408.

On motion of J. W. Smith, of counsel for plaintiff, and in behalf of Peyton and Smith, creditors of the plaintiff, and on suggesting that defendants have paid to the sheriff the amount of the *fi. fa.* herein issued, subject to the agreement annexed to said *fi. fa.*, and on filing copy of act of sale from the sheriff of the 1st District Court, to Sherman Johnson, of the notarial transfer by said Sherman Johnson to Sam'l Smith & Co., by them to the said McCargo, contradictorily with J. Finney, of counsel for Coleman and Adkisson, and on behalf of H. B. Eggleston, attorney of Yancy & Co, in their suit in this Court against said McCargo, No. 7014: Ordered, that the sheriff do distribute said money as follows, viz:—

1st. To said Yancy & Co., by their said attorney, forty-five hundred and fifty-five $\frac{71}{100}$ dollars.

2d. To said Coleman and Adkisson, by their said attorney, one thousand and sixty $\frac{55}{100}$ dollars; and that the balance be paid to said plaintiff by his said attorney.

Extracts from the minutes of 25th March, 1845.

JOHN E. HOLLAND,
D'y Cl'k.

Order. Entered March 25, 1845.

THOMAS MCCARGO
vs.
MERCHANTS' INSURANCE Co. } 4408.

On motion of J. Tinney, of counsel for Coleman and Adkisson, ordered, that he be allowed to withdraw the bond for $1771 $\frac{39}{100}$ dollars, and the assignment for $1000 filed by them in this case on leaving copy thereof.

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Document endorsed, "Copy of Bond and Assignment referred to in order of date, 25th M'h, 1845."

$1771 39. On demand, with legal interest thereon from the 1st day March, 1842, I, Thomas McCargo, promise and oblige myself, my heirs, &c., to pay, or cause to be paid, unto Coleman and Adkisson the just and full sum of seventeen hundred and seventy-one dollars and thirty-nine cents for value rec'd.

Witness my hand and seal this 20 day of August, 1842.

(Signed) THOMAS McCARGO. [SEAL.]

Witness,
ISAAC ADKISSON.

In part payment of the within bond, I subrogate the obligees, Coleman and Adkisson, to one thousand dollars of the judgment in my favor against the Merchants' Insurance Company of New Orleans, and assign to the said obligees that much of said judgment.

Feb'y 17th, 1845.

THOMAS McCARGO.

Witness,
JNO. FINNEY.

Document endorsed, "Transfer of judgment, Sherman Johnson to Sam'l Smith & Co." Filed March 25, 1845.

STATE OF LOUISIANA,
City of New Orleans.

Be it known that this day, before me, Joseph Beuzaker Marks, a notary public in and for the City and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn—

Personally came and appeared Mr. Sherman Johnson, of this city, who declared that, for the consideration of twelve hundred dollars, to him paid in ready money, the receipt whereof is hereby acknowledged, and acquittance granted therefor, he does, by these presents, grant, bargain, sell, transfer, assign, and set over unto Messrs. Sam'l Smith & Co., of this city, composed of Sam'l Smith and Andrew W. Smith, herein represented by the former, present and accepting the same, a certain judgment rendered by the Commercial Court of New Orleans, on the fourteenth January, 1843, in the suit entitled Thomas McCargo *vs.* The Merchants' Insurance Company of New Orleans, No. 4408 of the docket of said Court, for the sum of fourteen thousand four hundred dollars, with interest and costs. This judgment is now pending in appeal before the Supreme Court of Louisiana, and was acquired by the said Sherman Johnson, at a public sale made by the sheriff of the District Court of the First District of this State on the fifth of January, instant, by virtue of a writ of *fieri facias* to him directed by the Honorable the First District Court

of this State in the suit of Samuel K. Montgomery *vs.* Thomas McCargo, being No. 22,134 of the docket of said Court:

To have and to hold the said judgment, interest, &c., unto the said purchaser, his heirs and assigns, to their proper use; and the said Sherman Johnson hereby subrogates the said Samuel Smith & Co. to all the rights, privileges, benefits, and advantages resulting from said judgment and interest, with full power to exercise the same in the same manner and to the same extent as he, the said Johnson, might or could have done. It is well understood and agreed between the parties that, in case the said Thomas McCargo should refund the consideration of this sale, to wit, the sum of twelve hundred dollars, in cash, with interest, at the rate of ten per cent. per annum, together with such charges as may accrue thereon, within ninety days from the date hereof, they, the said Samuel Smith & Co., shall be bound to transfer the judgment now conveyed to them by said Thomas McCargo or his assigns; but should said Thomas McCargo fail to pay said sum of twelve hundred dollars, with interest and charges, as aforesaid, by the time above specified, then said Sam'l Smith & Co. shall offer and sell said judgment and interest at public auction, after an advertisement of ten days: the proceeds to be appropriated to the payment of said sum of twelve hundred dollars, with interest and charges, and the balance, if any, to be paid over to said Thomas McCargo.

It is further understood and agreed that, in case the judgment above conveyed should not be confirmed by the Supreme Court, or in case of the sale, after ninety days above stated, it should not bring the amount of twelve hundred dollars, with interest and expenses, in either event, the said Samuel Smith & Co. will not hold the said Sherman Johnson responsible for the amount or any deficiency.

Thus done and passed in my office, in the City of New Orleans aforesaid, this tenth day of January, eighteen hundred and forty-four, in presence of Daniel J. Ricards and Theophile Commagere, witness of lawful age, and domiciliated in this city, who hereunto sign their names with said appearers, and me, said notary.

Original signed SHERMAN JOHNSON,
SAM'L SMITH,
D. J. RICHARDO,
THEO. COMMAGERE,
JOS. B. MARKS,
Not. Pub.

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof, I grant these presents under my signature and seal of office of new Orleans, this tenth day of January, 1844.

JOS. B. MARKS,
Not. Pub.

Document endorsed, "Transfer of judgment, S. and A. W. Smith to Thomas McCargo." Filed March 25th, 1845.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Joseph Bengkin Marks, a notary public in and for this city and parish of New Orleans, and State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Messrs. Samuel Smith and Andrew Watrous Smith, both of this city, who declared that, for the consideration of thirteen hundred dollars, to them paid in ready money, the receipt whereof is hereby acknowledged, and acquittance granted therefor, they do by these presents grant, bargain, sell, transfer, and set over unto Thomas McCargo, of Halifax County, Virginia, here present, and accepting the same, a certain judgment rendered by the Commercial Court of New Orleans, on the fourteenth January, 1843, in the suit entitled "Thomas McCargo *vs.* The Merchants' Insurance Company of New Orleans, No. 4408 of the docket of said Court, for the sum of fourteen thousand four hundred dollars, with interest and costs. This judgment is now pending in appeal before the Supreme Court of Louisiana; was acquired by the said Samuel and Andrew W. Smith from Sherman Johnson, by an act passed before me, the undersigned notary, on the tenth of January last, 1844:

To have and to hold the said judgment, interest, &c., unto the said purchaser, his heirs and assigns, to their proper use; and the said Samuel Smith and Andrew W. Smith hereby subrogate the said Thomas McCargo to all the rights, privileges, benefits, and advantages resulting from said judgment and interest, with full power to exercise the same in the same manner and to the same extent as they, said Samuel and Andrew W. Smith, might or could have done.

It is well understood that the said Samuel Smith and Andrew W. Smith, in making this transfer, do not in any manner guarantee the payment of said judgment, or any part thereof, but merely convey their right to the same, under the transfer from Sherman Johnson to them, as before referred to, the said Thomas McCargo hereby releasing the said Sam'l Smith and Andrew W. Smith for all responsibilities in the premises.

Done and passed in my office in the City of New Orleans aforesaid, this twenty-ninth day of March, eighteen hundred and forty-four, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses, of lawful age, and domiciliated in this city, who hereunto sign their names, with said appearers and me, said notary.

Original signed

SAM'L SMITH,
A. W. SMITH,
THOS. McCARGO,
D. J. RICARDO,
THEO. COMMAGERE.
JOS. B. MARKS,
Not. Pub.

I certify the foregoing to be a true copy from the original act extant in my current register.

In faith whereof, I grant these presents under my signature and seal of office at New Orleans, this thirtieth day of March, 1844.

JOS. B. MARKS,
Not. Pub.

Deed. Filed March 25, 1845.

Whereas I, A. Sidney Lewis, Sheriff of the District Court of the First District of the State of Louisiana, by virtue of a writ of *fieri facias*, to me directed by the Honorable the said District Court of the First District of the State of Louisiana, in the suit of Samuel K. Montgomery *vs.* Thomas McCargo, being No. 22,134 of the docket of said Court, after having fulfilled and complied with all the previous legal requisites, did seize all the right, title, and interest of the defendant, Thomas McCargo, in and to a certain judgment rendered by the Commercial Court of New Orleans, on the fourteenth January, eighteen hundred and forty-three, in the suit entitled Thomas McCargo *vs.* The Merchants' Company of New Orleans, No. 4408 of the docket of said Court, for the sum of fourteen thousand four hundred dollars, with interest and costs. This judgment is now pending in appeal before the Supreme Court of Louisiana.

And, after having given due and legal notice to the said defendant, through J. W. Smith, appointed curator *ad hoc* of the said seizure, in the manner pointed out by law, I advertised the said judgment for sale, after the expiration of the legal delay from the time of said notice, to wit, on the 23d December, eighteen hundred and forty-three, by advertisements, composed in English and French, announcing the said sale to take place at the City Exchange, on the fifth day of January, 1844; said advertisements were inserted and published in French and English, in two papers in the City of New Orleans, to wit, in the *Louisiana Courier* and in the *New Orleans Bee*, from the twenty-third day of December, 1843, to the day of sale: being full ten days from the date of the first notice given. And, having further complied with and performed all the additional previous legal requisites, did expose the same at public sale, according to law, at the City Exchange, at the hour of twelve o'clock, meridian, on the fifth day January, eighteen hundred and forty-four, when Sherman Johnson, being the highest and last bidder, the said before described judgment was adjudged to the said Sherman Johnson, for the price of four thousand three hundred dollars, payable cash, which I hereby acknowledge was settled in the following manner, viz:—

The purchaser paid me in cash the sum of $1195 25, being the amount of plaintiff's claim, and the costs and charges on the sale, and the balance of the price of sale said purchaser retained in his hands, he having settled with the attorney of the defendant therefor,

as per written agreement of said defendant's counsel, being the sum of $3205 75

Amount of sale, $4300 00

Now, therefore, know all men by these presents, that I, the said sheriff, in consideration of the premises, and by virtue of the laws of the State of Louisiana in such case made and provided, do sell and transfer the said before described judgment to the said Sherman Johnson, and all the right and title which the said Thomas McCargo had in or to the said before described judgment; to have and to hold the same to the said Sherman Johnson, his heirs and assigns, forever.

In witness whereof, I have hereunto signed my name in New Orleans, in the State of Louisiana, this fifth day of January, in the year one thousand eight hundred and forty-four, and in the sixty-eighth year of the Independence of the United States.

ALD. SIDNEY LEWIS,
Sheriff.

Signed in presence of
A. MAYNIER,
P. PAGAUD.

STATE OF LOUISIANA,
First Judicial District Court.

I hereby certify the foregoing deed was on the day of the date hereof duly recorded in the office of the clerk of this Court according to law, in Deed Book H, page 482.

Clerk's Office, New Orleans, 6th January, 1844.

P. GILMON,
D'y Cl'k.

Order to pay over, &c. *Filed March* 25, 1845.

T. McCARGO
vs.
MERCHANTS' INSURANCE Co.

On motion of Peyton & Smith, of counsel for said plaintiff, and in their individual capacities as creditors of said plaintiff, and on suggesting that the said defendants have paid to the sheriff the amount of the *fi. fa.* herein issued, subject to the agreement annexed to the said *fi. fa.*, and on filing the copy of the act of the sale of the sheriff of the First District Court to Sherman Johnson, of the notarial transfer by said Sherman Johnson to Samuel Smith & Co., and by them to said McCargo; and contradictorily with H. B. Eggleston, attorney for Yoncey & Co., in their suit *vs.* said McCargo, No. 7014, with J. Finney as attorney of Coleman & Adkisson, and A. Guyol, deputy sheriff, it is ordered that said sheriff do distribute said money as follows:—

1st. To said Yoncey & Co., by their said attorney, the sum of $4,555\frac{71}{100}$.

2d. To said Coleman & Adkisson, by their said attorney, the sum of $1060\frac{55}{100}$.

And that the balance be paid to said plaintiff by his said attorneys.

PEYTON & SMITH,
for Plff.

EGGLESTON,
Att'y for Youncy & Co.

JNO. FINNEY,
for Coleman & Adkisson.

ARMS GUYOL,
D'y Sheriff C. C.

STATE OF LOUISIANA,
Fourth District Court of New Orleans.

I, William C. Auld, Clerk of the Fourth District Court of New Orleans, State aforesaid, do hereby certify that the above and foregoing forty pages contain a full and complete transcript of the record of the case wherein Thomas McCargo is plaintiff, and the Merchants' Insurance Company of New Orleans is defendant, instituted in the late Commercial Court of New Orleans, and now on the records thereof, under the number 4408.

And I do further certify that, pursuant to an act of the Legislature of this State, approved the 30th day of April, 1846, the records of the said late Commercial Court have been transferred to this court, and are now in my custody and possession as clerk aforesaid.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at the City of New Orleans, on this tenth day of February, in the year of our Lord one thousand eight hundred and fifty-four, and in the seventy-eighth year of the Independence of the United States of America.

[SEAL.] WM. C. AULD,
Cl'k.

STATE OF LOUISIANA.
PARISH OF ORLEANS,
City of New Orleans.

I, Mortimer M. Reynolds, sole Judge of the Fourth District Court of New Orleans, do hereby certify that William C. Auld, whose signature appears to the above certificate, is now, and was at the time of signing the same, clerk of the said court; and that the signature "Wm. C. Auld, Cl'k," to the said certificate, is in the proper handwriting of him, the said clerk. To his official acts, as

such, full faith and credit are due; and I further certify his attestation to be in due form of law.

Given under my hand, at the City of New Orleans, this 10th day of February, A. D. 1854.

M. M. REYNOLDS,
Judge.

McCargo
vs. } 31.
Merchants' Insurance Co.

Official copy proceedings in American Courts to recover amount of policy on vessels.

TINDER & EYRE,
1 *John Street, Bradford Row.*

United States of America,
Department of State.

To all whom the presents shall come, greeting:

I certify that the papers hereunto annexed are true copies of the original on file in this department.

In testimony whereof, I, Lewis Cass, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

Done at the City of Washington, this 25th day of May, A. D. 1857, and of the Independence of the United States of America the 81st.

[SEAL.] LEW. CASS.

Thereupon the said cause was set for hearing by consent of said complainants and defendants, by their solicitors aforesaid; and said cause was continued until the third Monday of October next.

And now, to wit, the said third Monday of October, in the year 1857, comes into Court here as well the said complainants by their solicitor aforesaid, as the said defendant by his solicitor, and thereupon, after full argument of the case, and after hearing the reading of all the papers in the cause, and after mature reflection thereon, the Court made the following decree:—

Edward A. Lockett, Henry D. Johnson, James G. Barret
vs.
John Pemberton, Liquidator of the Merchants' Ins. Company.

No. 1101. In Equity.

This cause having been regularly set for hearing upon bill, answer, order of publication, exhibits, general replication, and proofs taken in the cause, and the argument of counsel, and the same having been read, heard, and considered by this Court; and this Court being of